

CR-10-00757-PHX-ROS, June 7, 2012

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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5	United States of America,)			
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United States of America,)
Plaintiff,)
vs.)
James R. Parker,)
Defendant.)
) CR-10-00757-PHX-ROS
) June 7, 2012
) 9:01 a.m.
)

08:50:55

08:50:55

BEFORE: THE HONORABLE ROSLYN O. SILVER, CHIEF JUDGE
REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRIAL - Day 6

(Pages 973 through 1068)

08:50:55

Official Court Reporter:
Elaine Cropper, RDR, CRR, CCP
Sandra Day O'Connor U.S. Courthouse, Suite 312
401 West Washington Street, Spc. 35
Phoenix, Arizona 85003-2151
(602) 322-7249

08:50:55

Proceedings Reported by Stenographic Court Reporter
Transcript Prepared by Computer-Aided Transcription

08:50:55

United States District Court

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I N D E XTESTIMONY

WITNESS	Direct	Cross	Redirect	VD
JOHN LOTARDO	983	1027		
WALTER CAVE	1045	1070		
CHARLES DEMORE	1073	1082		
THOMAS P. BOWMAN	1088			
WALTER E. GIBBS	1114	1135		
CLEATUS P. HUNT, JR.	1137			

E X H I B I T S

Number		Ident	Rec'd
48	Certified Copy of M&I Bank records for Cimarron River Ranch LLC account #43545964		1114
52	Certified Copy of The Harris Bank records for Omega Construction Inc. account #4810035	1124	1114
54	Certified Copy of The First National Bank of New Mexico records for RSJ Investments LLC account #106127	1131	1114
60	Certified Copy of JP Morgan Chase Bank (formerly known as Bank One) records for Resorts Consulting Quorum LLP account #684215809 and account #2722320401		1114
67	Certified Copy of Metcalf Bank (formerly known as American Sterling Bank) records for Sunlight Financial LLC account #502030	1129	1114
69	Certified Copy of Colorado East Bank & Trust (formerly known as First National Bank of Tribune) records for Roy Young dba Cimarron River Ranch account #1011331102		1114
115	Certified Copy of Stewart Title & Trust of Phoenix Records	1018	987

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1	118	Certified Copy of Warranty Deed recorded July 28, 1998, for 35802 N. Meander Way, Carefree, AZ	987	987	08:50:55
2					
3	119	Certified Copy of Warranty Deed recorded August 9, 2002, for 35802 N. Meander Way, Carefree, AZ	1003	987	
4					
5	120	Certified Copy of Deed of Trust dated July 31, 2003, for 35802 N. Meander Way, Carefree, AZ	1005	987	08:50:55
6					
7	121	Certified Copy of Deed of Trust dated August 15, 2005, for 35802 N. Meander Way, Carefree, AZ	1017	987	
8					
9	137	Promissory Note between Sunlight Financial LLP ("Maker") and Universal Properties ("Holder") for \$1.5 million dated August 15, 2005 (sub-exhibit to Exhibit 204)	1054	1048	08:50:55
10					
11	138	Letter dated August 14, 2005, from Bill Graves, Universal Properties, to Larry Bowman, regarding the refinancing of real property located at 35802 W. Meander Way, Carefree, Arizona (sub-exhibit to Exhibit 204)		1048	
12					
13					
14					
15	149	Settlement Statement between Sunlight Financial LLP ("Borrower") and Universal Properties ("Lender") for \$1.5 million loan dated August 16, 2005 (sub-exhibit to Exhibit 115)	1020	987	08:50:55
16					
17					
18	150	Stewart Title & Trust of Phoenix Final Disbursement Report for Sunlight Financial LLP loan dated August 16, 2005 (sub-exhibit to Exhibit 115)	1022	987	
19					
20					08:50:55
21	151	Stewart Title & Trust of Phoenix Check #00011554 for \$377,419.47 payable to Sunlight Financial LLP dated August 16, 2005 (sub-exhibit to Exhibit 115)	1023	987	
22					
23	152	Stewart Title & Trust of Phoenix Check #00011555 for \$377,419.48 payable to Sunlight Financial LLP dated August 16, 2005 (sub-exhibit to Exhibit 115)	1024	987	
24					
25					08:50:55

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1	153	Stewart Title & Trust of Phoenix Check #00011556 for \$377,419.47 payable to Sunlight Financial LLP dated August 16, 2005 (sub-exhibit to Exhibit 115)	1025	987	08:50:55
2					
3					
4	154	Stewart Title & Trust of Phoenix Account Servicing Agreement for Sunlight Financial LLP ("Payor") and Universal Properties ("Payee") dated August 15, 2005 (sub-exhibit to Exhibit 115)		987	08:50:55
5					
6					
7	166	Certified Copy of Deed of Trust dated February 10, 2004, for 35802 N. Meander Way, Carefree, Arizona	1015	987	
8					
9	169	Certified Copy of Deed of Trust dated July 21, 1998 for 35802 N. Meander Way, Carefree, Arizona	991	991	
10					08:50:55
11	174	Promissory Note between Sunlight Financial LLP ("Maker") and Universal Properties ("Holder") for \$355,000 (sub-exhibit to Exhibit 115)	1011	987	
12					
13	175	Sunlight Financial LLP Partnership Agreement dated July 29, 2002 (sub-exhibit to Exhibit 115)		987	
14					
15	177	Bowman & Associates Insurance Agency Records concerning Sunlight Financial LLP and property located at 35802 N. Meander Way, Carefree, AZ	1089	1090	08:50:55
16					
17					
18	179	Insurance Coverage Summary effective August 4, 1999, for property located at 35802 N. Meander Way, Carefree, AZ (sub-exhibit to Exhibit 177)		1090	
19					
20	180	Evidence of Property Insurance for property located at 35802 N. Meander Way, Carefree, AZ dated August 11, 1999 (sub-exhibit to Exhibit 177)		1090	08:50:55
21					
22					
23	181	Dwelling Fire Policy Declaration Renewal for property located at 35802 N. Meander Way, Carefree, AZ, effective August 15, 2007 (sub-exhibit to Exhibit 177)		1090	
24					
25	204	Universal Properties Records concerning Sunlight Financial LLP and Loans on	1048	1048	08:50:55

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1	property located at 35802 N. Meander Way, Carefree, AZ			08:50:55
2				
3	205 Letter from Universal Properties to Stewart Title Account Servicing dated August 12, 2005 (sub-exhibit to Exhibit 204)		1048	
4				
5	369 Certified Copy of Records documenting U.S. Border Crossings for JAMES and JACQUELINE PARKER	1139	1140	08:50:55
6				
7	372 American Express Records concerning JAMES and JACQUELINE PARKER	1116	1116	
8				
9	384 Universal Properties records concerning 2010 refinancing of loan on property located at 35802 N. Meander Way, Carefree, AZ	1065	1048	08:50:55
10				
11	540 State Farm Records - Screen Print of Auto Application, Policy #173-7013, dated June 13, 2011 (sub-exhibit to Exhibit 367)		987	
12				
13	547 Stewart Title & Trust Payoff Statement dated 8/15/05 (sub-exhibit to 115)	1018	987	
14				
15	548 Stewart Title & Trust August 7, 2003 letter (sub-exhibit to 115)	1013	987	08:50:55
16				
17	549 Stewart Title & Trust estimated quarterly payments for 2003 loan (sub-exhibit to 115)	1013	987	
18				
19	551 Letter fo James Parker from Robert Dietrich dated July 22, 2003 (sub-exhibit to 115)	1007	987	
20				
21	552 Stewart Title & Trust Payoff Calculations dated 7/28/03 (sub-exhibit to 115)	1008	987	08:50:55
22				
23	553 Letter fo James Parker from Robert Dietrich dated February 14, 2002 (sub-exhibit to 115)		987	
24				
25	554 Stewart Title & Trust July 19, 1999 deposit made to Stewart Title & Trust (sub-exhibit to 115)	1002	987	08:50:55

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1	555	Note Secured By Deed of Trust dated July 21, 1998 (sub-exhibit to 115)	998	987	08:50:55
2					
3	556	Residential Resale Real Estate Purchase Contract And Receipt For Deposit (sub-exhibit to 115)	993	987	
4					
5	557	Trust Agreement for Cornerstone Resource Trust dated June 22, 1994 (sub-exhibit to 115)	995	987	08:50:55
6					
7	558	Stewart Title & Trust Supplemental Escrow Instructions (sub-exhibit to 115)	1003	987	
8	559	Stewart Title & Trust Account Listing for 1998 loan (sub-exhibit to 115)		987	
9					
10	560	Stewart Title & Trust Account Servicing Agreement (sub-exhibit to 115)	1013	987	08:50:55
11	561	Settlement Statement for 7/30/2003 loan (sub-exhibit to 115)	1011	987	
12					
13	562	Settlement Statement for 1998 purchase (sub-exhibit to 115)	996	987	
14	563	Universal Properties Unconditional Guarantee Of Payment (sub-exhibit to 204)	1077	1048	
15					08:50:55
16	564	Universal Properties Subordination Agreement (sub-exhibit to 204)	1059	1048	
17	565	Universal Properties letter to Stewart Title Account Servicing dated August 12, 2005 (sub-exhibit to 204)		1048	
18					
19	566	Universal Properties email dated August 10, 2005 (sub-exhibit to 204)		1048	
20					08:50:55
21	567	Universal Properties Checks (sub-exhibit to 204)		1048	
22	568	Universal Properties Facsimile Transmittal dated August 11, 2005 (sub-exhibit to 204)		1048	
23					
24	569	Universal Properties Quarterly Billing (sub-exhibit to 204)		1048	
25	570	Bowman Insurance Auto-Owners Insurance Documents (sub-exhibit to 177)	1107	1090	08:50:55

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1	571	Bowman Insurance Auto-Owners Insurance Dwelling Application (sub-exhibit to 177)	1105	1090	08:50:55
2					
3	572	Bowman Insurance Chubb Insurance Documents (sub-exhibit to 177)	1094	1090	
4					
5	573	Bowman Insurance Acord Evidence Of Property Insured dated 8/11/1999 (sub-exhibit to 177)	1090	1090	08:50:55
6					
7	574	Bowman Insurance Fax Transmission dated 8//15/03 (sub-exhibit to 177)	1106	1090	
8					
9	575	Bowman Insurance Appraisal Worksheet (sub-exhibit to 177)	1105	1090	
10					
11	576	Letter to James Parker from Robert Dietrich dated 10/18/02 (sub-exhibit to 177)	1094	1090	08:50:55
12					
13	577	Letter to James Parker from Robert Dietrich dated 7/26/02 (sub-exhibit to 177)	1093	1090	
14					
15	578	Bowman Insurance Fax Transmission dated 6/11/02 (sub-exhibit to 177)		1090	
16					
17	579	Bowman Insurance Letter To James Parker dated 03/01/02 (sub-exhibit to 177)	1092	1090	08:50:55
18					
19	580	Bowman Insurance Record Evidence Of Property Insured dated 8/10/00 (sub-exhibit to 177)	1092	1090	
20					
21	581	Bowman Insurance Emails dated 8/06/03 (sub-exhibit to 177)	1102	1090	
22					
23		<u>MISCELLANEOUS NOTATIONS</u>			
24					
25	Item			Page	08:50:55
26					
27		Proceedings outside the presence of the jury		981	
28					
29		<u>RECESSES</u>			
30					
31				Page	Line
32		(Recess at 9:03; resumed at 9:10.)		982	21
33		(Recess at 10:22; resumed at 10:44.)		1026	18
34		(Recess at 11:51; resumed at 1:06.)		1064	24
35		(Recess at 2:19; resumed at 2:48.)		1108	6
36					08:50:55

United States District Court

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A P P E A R A N C E S

08:50:55

1
2 For the Government:

3 **PETER S. SEXTON, ESQ.**

4 **WALTER PERKEL, ESQ.**

5 U.S. Attorney's Office

40 North Central Avenue, Suite 1200

Phoenix, AZ 85004-4408

602.514.7500

08:50:55

6 For the Defendant:

7 **MICHAEL LOUIS MINNS, ESQ.**

8 **ASHLEY BLAIR ARNETT, ESQ.**

9 Minns Law Firm, P.L.C.

9119 S. Gessner, Suite 1

Houston, TX 77074

713.777.0772/(fax) 713.777.0453

08:50:55

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P R O C E E D I N G S

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(Court was called to order by the courtroom deputy.)

(Jury out.)

(Proceedings begin at 9:01.)

THE COURT: All right. Please be seated.

Counsel, you wanted to discuss something with me?

MR. MINNS: Yes, please, Your Honor.

It appears that the government has two representatives from the title company and it appears that the only difference between the two is one of them is an expert that wasn't disclosed as an expert and where we did not get a CV on. So as we're looking at this, that all I can see is the difference between them. John Lotardo, general counsel to Stewart Title & Trust, he will explain services provided by Stewart Title & Trust and further explain details of the loans.

We don't have a CV on this gentleman, and it appears suspiciously like an expert witness disguised as a fact witness disguised as a custodian witness which we weren't objecting to the records anyway. And then they have another custodian also.

THE COURT: Okay.

MR. PERKEL: That's wrong, Your Honor. There's only one witness from Stewart Title. It's John Lotardo. There's not another witness from Stewart Title. He's going to explain the role Stewart Title had in refinancing the home in 2005 and 2003. He's a fact witness. He might explain some terminology

08:50:55

09:01:10

09:01:28

09:01:48

09:02:22

09:02:35

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1 used in the records. He's not here to offer an opinion as to 09:02:39
2 the validity of the loans or as to anything else. It's
3 basically to explain the role Stewart Title had in these loans
4 and the paperwork and the records. I don't plan on spending a
5 long time on that. I anticipate about 45 minutes direct 09:02:54
6 testimony. I hope it can be shorter. It might be a little bit
7 longer than that. We don't know. I haven't gone through it
8 with him from beginning to end, but there's only one witness
9 from Stewart Title. I don't know what Mr. Minns is referring
10 to. 09:03:09

11 MR. MINNS: I stand corrected.

12 THE COURT: All right. And it doesn't sound like he
13 is going to be an expert witness. So I have, it looks like,
14 Mr. Sexton, what I have in front of me had been highlighted by
15 you? 09:03:31

16 MR. SEXTON: Yes, Judge. That's consistent with the
17 pleading we filed with the Court.

18 THE COURT: Okay. So we will be ready in about five
19 minutes and then we'll bring in the jury.

20 COURTROOM DEPUTY: All rise. 09:03:44

21 (Recess at 9:03; resumed at 9:10.)

22 (Jury enters.)

23 (Court was called to order by the courtroom deputy.)

24 THE COURT: Please be seated.

25 Good morning. All right. Let's proceed. 09:10:40

United States District Court

JOHN LOTARDO - Direct

1 (The following portion was previously separately 09:10:43
2 transcribed and is incorporated herein.)

3 MR. PERKEL: Thank you, Your Honor. The government
4 calls John Lotardo.

5 JOHN LOTARDO, 09:10:46
6 called as a witness herein by the Government, having been first
7 duly sworn or affirmed to testify to the truth, was examined
8 and testified as follows:

9 COURTROOM DEPUTY: State your name for the record,
10 spell your last name, please. 09:11:30

11 THE WITNESS: John Lotardo, last name is
12 L-O-T-A-R-D-O.

13 COURTROOM DEPUTY: Please have a seat right up here,
14 please.

15 MR. PERKEL: Your Honor, we're having just one small 09:11:59
16 difficulty. Can I approach your clerk, please?

17 THE COURT: Yes.

18 **DIRECT EXAMINATION**

19 BY MR. PERKEL:

20 Q. Good morning, Mr. Lotardo. Could you please introduce 09:12:24
21 yourself to the jury?

22 A. I am John Lotardo and I work over at Stewart Title.

23 Q. What is Stewart Title?

24 A. Actually, Stewart Title is what's called a title and
25 escrow company. What that does is, we're the ones that help 09:12:35

JOHN LOTARDO - Direct

1 coordinate when people buy and sell property. 09:12:38

2 Q. And how long have you been employed with Stewart Title?

3 A. I have actually been there for almost 19 years.

4 Q. And what is your job at Stewart Title?

5 A. I'm the senior vice president and general counsel, so I'm 09:12:55

6 kind of like an in-house attorney guy that works there.

7 Q. And have you been at that same position during your tenure
8 at Stewart Title?

9 A. Yes, I am.

10 Q. You said Stewart Title helps with the transfer of land. 09:13:16

11 What does that mean?

12 A. There's a couple of facets. When you're buying and
13 selling property, you have a couple of aspects. You have the
14 title side of it, meaning like the real estate records where
15 when you're buying and selling property, you want to make sure 09:13:31

16 who is selling the property they really own it. They haven't
17 sold it to someone else; that they don't have a loan on it that
18 doesn't get paid off, that kind of thing. Those are the title
19 records. So we have like a title side that does that. They
20 kind of review title records to make sure who owns what and so 09:13:47
21 forth.

22 Then you have the what I call the escrow side.

23 That's the face of the company when you're interacting with the
24 company for signing documents when you're, like, buying a piece
25 of property, who you go to sign the deeds with or when you're 09:14:02

United States District Court

JOHN LOTARDO - Direct

1 signing the loan documents for your lender, when you are 09:14:08
2 borrowing money. Usually that's the escrow side. Those are
3 the ones that are working on the paperwork.

4 And then there's like the third aspect -- I mean, we
5 do various other things as part of it. But then the other 09:14:18
6 aspect is sometimes when lenders don't have their own -- how do
7 I explain it -- payment processing systems, they will make
8 their payments through Stewart Title versus, like, making it to
9 your Wells Fargo or B of A. Some smaller companies don't have
10 their own payment processing system, so they use our company. 09:14:37

11 And that's another facet of what we do.

12 Q. And you just explained that you make sure the title --
13 there are no problems with the title. What does that mean?
14 What does the word "title" mean and what does it mean "no
15 problems with the title"? What does that mean with regards to 09:14:56
16 your work?

17 A. I understand that's probably a little open-ended but it is
18 a very broad statement because it's based upon what -- when I
19 talk about title, I'm talking about title records, real estate
20 records that you see at the County Recorder's Office because 09:15:14
21 you're supposed to record documents that I own the property as
22 the deed is in my name. Or if there's a lender on the
23 property, there will be a deed of trust recorded with the
24 County Recorder's Office, so we would pick that up when we're
25 reviewing the title records. Or if there's a release for that 09:15:29

United States District Court

JOHN LOTARDO - Direct

1 mortgage, we'll pick that up. Or, say, for example, the -- 09:15:34
2 like IRS, if you had, like, a lien on the property, it would
3 show up as a lien of record recorded and we would find that,
4 it's that kind of thing.

5 Q. And do lenders employ your services to check the title? 09:15:53

6 A. Yeah, all the time. I mean, that's what we do. When
7 people are -- typically, when you're lending money to someone,
8 you want to make sure that they own the property, that they are
9 saying that if I don't pay, you get to foreclose on this
10 property and take the property back, kind of like an IOU kind 09:16:11
11 of thing.

12 Q. And when you used the word "escrow," people here are going
13 to close on a house in escrow, what does that mean?

14 A. Closing on a house or closing escrow, that's just kind of
15 a term of art. When you bought your home, if you went to a 09:16:31
16 title company to sign all of your papers, you had a bunch of
17 pages that you signed, you went to the escrow company's branch
18 office and that event when you're signing all of those
19 documents and getting the documents assembled and getting
20 recorded, that is the closing of the escrow. That whole event 09:16:53
21 is the closing transaction when you basically bought the house
22 or sold the house.

23 Q. Okay. Did Stewart Title provide these types of services
24 that you just described, these business services, with respect
25 to a residence located at 35802 North Meander Way in Carefree, 09:17:08

United States District Court

JOHN LOTARDO - Direct

1 Arizona? 09:17:14

2 A. Yes, I believe so.

3 Q. In front of you are Exhibits 115 and then the sub-exhibits

4 174 through 175, 149 through 154, and 547 through 562. Just

5 looking at Exhibit -- 09:17:34

6 MR. MINNS: No objection to any of them.

7 THE COURT: They are admitted.

8 (Exhibit Numbers 115, 174, 175, 149-154, 547-562 were

9 admitted into evidence.)

10 MR. PERKEL: Okay. 09:17:39

11 And, Your Honor, at this time, the government also

12 seeks the admission of the Exhibits 118 through 121 and 166.

13 They are certified records from Maricopa County --

14 MR. MINNS: No objection to any of them.

15 THE COURT: No objection? 09:17:56

16 MR. MINNS: No objection to any of those, Your Honor.

17 THE COURT: They are admitted.

18 MR. PERKEL: Okay.

19 (Exhibit Numbers 118-121, 166 were admitted into

20 evidence.) 09:18:02

21 BY MR. PERKEL:

22 Q. Let's start with Exhibit 118. It's in the folder in front

23 of you so you can look for it, and we're going to also put it

24 on the screen in front of you, too, to help.

25 Now, do you see at the top of the screen it says 09:18:22

JOHN LOTARDO - Direct

1 Stewart Title & Trust? 09:18:25

2 A. Yes.

3 Q. And to the right of that there's a bar and under that it

4 says "Official Records of the Maricopa County Recorder"?

5 A. Yes. 09:18:32

6 Q. Can you explain what this document is?

7 A. Yeah. Well if you look at, that remember earlier I talked

8 about where people buy and sell properties and we check the

9 records of when people are recording documents and will pick up

10 a deed. Well, this shows you that there's a warranty deed 09:18:45

11 where, basically, someone has bought and sold a piece of

12 property assuming bought and sale. You look at it, it was done

13 in 1998 and it's the County Recorder's Office here in Maricopa

14 County so it's identifying this document got recorded here in

15 Maricopa County. And if you look, it's stamped by Stewart 09:19:09

16 Title & Trust of Phoenix. That means that we're the ones that

17 handled the transaction at the time. We're the ones that more

18 than likely -- we're the ones that did the escrow and closed on

19 the transaction.

20 Q. Let me ask you a question. The term "warranty deed," is 09:19:23

21 that just to reflect a transfer of title? Is that a simpler

22 way of saying it?

23 A. Right. You're buying a piece of property. I am giving

24 you a warranty deed. I am warranting, I am promising that I

25 have this property and I'm giving it to you. This is the deed. 09:19:40

JOHN LOTARDO - Direct

1 This is the document that does it. 09:19:46

2 Q. Can you tell us, just looking at the document, this is a
3 loan or a transfer that Stewart Title helped facilitate?

4 A. Yes, sure.

5 Q. And can you tell us who is selling the property to whom by 09:19:58
6 reading the document?

7 A. Yes. If you look at it, it will explain that the grantor,
8 that is the seller, that's the easy way to figure out grantor
9 is seller, was the group on the top that is highlighted which
10 is the Dietrich Successor Trustees of the Dietrich Revocable 09:20:14
11 Trust, blah, blah, blah, goes, conveys to -- then you go to the
12 next section, who it went to, who is the buyer.

13 Q. And can you read that next section where it says conveys
14 and warrants?

15 A. Yes, conveys and warrants to grantees, that's basically 09:20:30
16 the buyer when acquiring title, and that's Lee O. Melby and
17 Rachel T. Parker, and then it has Harris, Trustees and James R.
18 Parker, Trust Manager under Cornerstone resource trust dated
19 June 22, 1994.

20 Q. And the property that is being transferred that is 09:20:54
21 recorded in this warranty deed, can you tell us where that is
22 on the document?

23 A. The property that we're talking about, go down to the next
24 section and you have two things. You have all of that lot 503,
25 Carefree, all of that according to book page 13, that's all of 09:21:07

United States District Court

JOHN LOTARDO - Direct

1 the deal description. That's what county records uses to
2 identify property.

09:21:14

3 But if you go to the next sentence, kind of, it gives
4 you a little help. It explains to you what it's commonly known
5 as the address. And if you look at the address, it has the
6 property there 35802 North Meander Way in Carefree and that is
7 the property we were talking about earlier.

09:21:25

8 Q. Okay. And then, finally, just above the title warranty it
9 says, "When recorded mail to," why is that there in the
10 document?

09:21:47

11 A. Well, back then, when you hand the document to the County
12 Recorder's Office, especially back then, they would need to
13 know what to do with the document after they have, you know,
14 recorded it. They don't keep all of the originals. It goes
15 back to typically the buyer so that they can have proof so they
16 can show, "Hi, I own it. Here's the deed." And so that's why
17 it would go back to them.

09:22:01

18 Q. Okay. And then what's the date that is reflected on this
19 warranty deed?

20 A. Well, the dated date is right there, that's July 24, '98.

09:22:18

21 Q. That's at the bottom. What about at the time it was
22 recorded, where is that on the document?

23 A. Up above where you go up to where the bar code is, that
24 tells you the actual date of when it got recorded.

25 Q. So that's when the transfer took place?

09:22:34

United States District Court

JOHN LOTARDO - Direct

1 A. That is really when it got recorded. And so from, you 09:22:36
2 know, for notice purposes, the world will see it on July 28.
3 Q. And this might sound obvious but why does someone have to
4 record a transfer of property or sale of property with the
5 County Recorder? Why are they even involved in this? Why 09:22:51
6 can't someone just buy and sell the property without that?
7 A. The big issue has to do with notice. See, in Arizona, if
8 you're buying a piece of property and you buy a piece of
9 property from someone and then they go and try to sell it to
10 someone else and sell to it someone else, you have to have a 09:23:06
11 way of the world figuring out who owns what and the county
12 records are exactly that. They are the records of who owns
13 what. So when you record this, this goes to show you that the
14 grantor, the seller, sold it on that date to the buyer.
15 Q. Okay. Let's move on. At this point I want you to take a 09:23:29
16 look at what has been identified as Exhibit 169.
17 MR. PERKEL: And I also seek the admission of this
18 exhibit, Your Honor.
19 MR. MINNS: No objection, Your Honor.
20 THE COURT: It's admitted. 09:23:40
21 (Exhibit Number 169 was admitted into evidence.)
22 MR. PERKEL: Thank you.
23 BY MR. PERKEL:
24 Q. Let's turn to page two of the exhibit. Focus on the top
25 third. 09:23:46

United States District Court

JOHN LOTARDO - Direct

- 1 What's the date on this deed of trust? 09:23:53
- 2 A. If you go up on the top, you see the -- up on the top
3 right, the bar code. And you can see the date that it was
4 recorded which was the same date as the deed when they bought
5 the property and that's July 28 of 1998. 09:24:08
- 6 Q. Okay. And we just looked at the warranty deed reflecting
7 the transfer of title. Why is there this additional document?
8 What does this deed of trust mean?
- 9 A. Well, this goes to explain to the world and it's called
10 deed of trust and assignment of rents, but really that's what 09:24:22
11 we all think of as, like, a mortgage, the IOU to the lender.
- 12 You know, you basically are letting the world know
13 that this property is not free and clear. There is money that
14 is owed against this property. So that's what that document
15 does. A lot of people call it a mortgage but we usually here 09:24:43
16 in Arizona use deeds of trust.
- 17 Q. And is the buyer referenced as the trustor in the line?
- 18 A. Yes. If you go to the middle of the document there, the
19 buyer on this is also the trustor because they are the ones
20 that -- basically the ones who are obligated to pay money. 09:25:02
- 21 Q. Okay. And let's zoom out of there and let's go to the
22 very bottom of the screen. What is the amount of money that is
23 contained in the document? What is the loan amount?
- 24 A. That is the -- \$375,000 is what is being excused or
25 promised, shall we say, against this property by the buyers. 09:25:39

United States District Court

JOHN LOTARDO - Direct

- 1 Q. So it's a loan from the sellers to the buyers of the 09:25:45
2 house?
- 3 A. Right, exactly. Yeah, that's a particular term of art. I
4 mean, you see that out there a lot. Sometimes you may call it
5 a seller carry-back and it's just exactly what it sounds like, 09:25:56
6 where rather than the buyer getting a separate loan from, like,
7 Wells Fargo or B or A or whatever, you go and, basically, the
8 seller lends you the money. So, basically, so they don't have
9 to go to a separate lender, the seller lends the money and
10 that's what this secures. 09:26:16
- 11 Q. And let's go to page six of the document. And who signs
12 the document as the trustor in this example, on this page?
- 13 A. Well, you go look in the middle of the document, there's a
14 signature block for the trust manager, James R. Parker.
- 15 Q. And let's take a look at some of the records from Stewart 09:26:49
16 Title associated with this sale.
- 17 Let's turn to Government's Exhibit 556 and page two
18 of the exhibit. This record comes from the Stewart Title file.
19 Can you tell us what this is?
- 20 A. Yeah. If you look on the very top of it, it explains it's 09:27:13
21 a purchase contract. It's a residential purchase contract here
22 for Arizona and that is just a document where there's the
23 agreement between the buyer and the seller. Okay. I'm going
24 to buy your property for \$100 or whatever and it explains all
25 of the terms of who is buying it, what you are buying, how 09:27:31

United States District Court

JOHN LOTARDO - Direct

1 much. So that's what the purchase contract does. 09:27:34

2 Q. And the buyer in this, is that referenced under the

3 receipt section?

4 A. Well, if you are talking about what the buyer is, the very

5 first line, it explains who the buyer is, and that is the 09:27:48

6 Cornerstone Trust. James Parker is the manager or nominee. I

7 mean, that kind of identifies who is going to be the buyer in

8 this agreement.

9 Q. And what is the offer? What is the buyer offering to buy?

10 A. Well, if you go down, you just are offering to buy a piece 09:28:04

11 of property and that is where it goes down to that whole idea

12 of address and legal description and that is down underneath

13 the offer section. It kind of explains that it is for 35802

14 North Meander Way, and that's the Carefree property we have

15 been talking about. 09:28:29

16 Q. Okay. If we could click out of there. At the bottom of

17 that first page it says seller financing. Is that what you

18 were referring to, the carry-back?

19 A. Yeah. If you go to the middle of that line where it talks

20 about seller finance, that was what I was talking about earlier 09:28:46

21 where rather than going to a separate institutional lender,

22 then the seller acts as the lender.

23 Q. Let's go to page nine of the same document and if you can

24 go in the middle of the page, do you see a signature there?

25 A. Right. That's under the -- for the offer, shall we say, 09:29:06

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JOHN LOTARDO - Direct

1 in the line where it explains that's the Cornerstone, the same 09:29:09
2 party that is listed as the buyer up above. This is the party
3 where they actually signed the document, then signed by -- I
4 think that's the manager. It's hard to read but I think that's
5 the same signature of James Parker. 09:29:26

6 Q. Okay. And let's go to page 11 of the document and this
7 one is a counteroffer. So what we just looked at was an offer.
8 This is a counteroffer. What does this mean?

9 A. Well, you keep in mind, someone may agree to buy your
10 house for 100 bucks but you think it's worth 200 bucks so you 09:29:44
11 do the counter action of, okay, well, I'll sell it to you for
12 \$200. So that's the banter back and forth. And the way you do
13 that is you create it in writing so you have this counteroffer
14 and you kind of assemble the documents altogether.

15 So this is the kind of the response to the offer. 09:30:04

16 Q. And if we could just back out of that screen and, again,
17 let's go to the bottom, the signature line on that document.
18 Does that look like the same signature we just looked at?

19 A. Right. This goes to show you that the counteroffer was
20 accepted. You know, so this is the plan. The contract and the 09:30:24
21 counteroffer together makes the agreement.

22 Q. Okay. And that date is July 20, 1998?

23 A. Yes.

24 Q. And let's now go to Exhibit 557. And what does that top
25 portion, what does that trust agreement read? 09:31:02

United States District Court

JOHN LOTARDO - Direct

1 A. It says, "I/we, the undersigned current managing," quote
2 unquote, "Trust manager of the Cornerstone Resource Trust
3 Agreement dated 6-22-94 states that the trust has not been
4 amended, modified or revoked, except as documented."

09:31:03

5 And then you have a signature.

09:31:19

6 Q. And so part of the role of your work is to check the title
7 and trusts and the makeup of trusts and so this would be a
8 document that would be one of the duties of Stewart Title?

9 A. Right. You want -- if you're dealing with a trust, you
10 want to know whether the terms that you have are current. So
11 this is just explaining, hey, this trust agreement is current,
12 basically. It's a trust certification.

09:31:38

13 Q. Let's go to Exhibit 562 and if we could just go to the top
14 third portion of the page. What is this document?

15 A. This is what's commonly called the HUD. In this case,
16 it's the final HUD. It's the standardized form which is
17 created by the Department of Housing, Urban Development. And
18 it's basically the snapshot of the money, you know, what is
19 happening in the deal, what the sales price was, what the
20 payouts were or how much people brought in for money. All of
21 the money stuff that relates to that transaction.

09:32:29

09:32:50

22 Q. Okay. And is this one of the documents that is signed in
23 escrow on the closing date?

24 A. Well, the final HUD typically isn't signed because that
25 happens, that is kind of done after that is done. The

09:33:09

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JOHN LOTARDO - Direct

1 estimated HUD, which is virtually the mirror of this, is what 09:33:13
2 is signed by everybody.

3 Q. And can you tell us the name of the borrower that is
4 listed?

5 A. The name of the borrower, that is James Parker as the 09:33:20
6 trust manager.

7 Q. And the name of the seller?

8 A. That Robert W. Dietrich as successor, trustee.

9 Q. And the property location?

10 A. That is the lot 503 which is the commonly known as the 09:33:32
11 35802 North Meander Way, Carefree.

12 Q. And, again, I see Stewart Title & Trust. That's the
13 settlement agent that is --

14 A. Right. That's another word for closing agent, escrow
15 company. It's called various names. 09:33:50

16 Q. And the settlement date to the right?

17 A. Yeah. If you look at that, it was basically July 24.

18 Q. Okay.

19 A. 1998.

20 Q. So this is the settlement statement that corresponds to 09:34:05
21 the previous warranty deed and the deed of trust that we just
22 discussed?

23 A. Right. Exactly. I mean, they have the contract. They
24 bought and sold property. The document recorded and this is
25 all of the final numbers because you have to have a record 09:34:18

United States District Court

JOHN LOTARDO - Direct

- 1 somewhere, and this is the document that records the financial 09:34:20
2 data of the transaction.
- 3 Q. Now, let's go to just in this same page, what's the
4 contract sales price?
- 5 A. Right there it's \$450,000. 09:34:32
- 6 Q. And if we could just click out of there and go to the
7 middle two-thirds of the page. So the contract sales price was
8 \$450 and then let's go to the amounts paid in or in behalf of
9 the borrower. What are the different sort of amounts that are
10 going to be paid in terms of making up the 450? 09:34:55
- 11 A. Well, you have a couple of different things. You have
12 your additional what's called good-faith deposit, your whole
13 earnest money deposit, and that's that first line where they
14 talk about \$50,000. Then you have the additional amount for --
15 at closing, when you are ready to close, how much more money 09:35:11
16 you have to bring in because there's an agreement. And that is
17 the \$25,000.
- 18 And then you have the -- down at the bottom is that
19 note and deed of trust, that carry-back. That's that loan that
20 we talked about earlier. 09:35:26
- 21 Q. So we're looking at a \$375,000 loan and \$75,000 deposit.
- 22 A. Yeah. You add that all together, that's the sales price,
23 basically, 450.
- 24 Q. Let's go to Exhibit 555, page two. And the top says "Note
25 secured by deed of trust." What's that? 09:35:51

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JOHN LOTARDO - Direct

- 1 A. Well, you have the deed of trust that we talked about 09:35:54
2 earlier. That's a document that gets recorded that tells the
3 world, "Hey, I owe this person this amount of money." The
4 document that identifies how much money, what the interest
5 rate, all of those kind of details, that is in the note and 09:36:10
6 that is the promissory note, just like the IOU. It's the
7 terms.
- 8 Q. So this is the note for that \$375,000 loan that we've just
9 been discussing?
- 10 A. Yes. Exactly. 09:36:24
- 11 Q. And, again, this is for the same value or the buyer,
12 again, is referenced as the Lee O. Melby and Rachel T. Parker
13 and James R. Parker. Is that where you have that line?
- 14 A. Yes. You have the person, the one that is obligated,
15 which is listed in the first line, this Melby and partner, 09:36:40
16 Cornerstone Resource Trust, and they are promising to pay to
17 the seller we talked about earlier, who is acting as the lender
18 and that is the Dietrich as successor trustee group. The trust
19 there.
- 20 Q. Let's go to the bottom portion of the page and if we could 09:37:00
21 just highlight -- actually, if you could highlight what is
22 payable as follows. This first paragraph contains the
23 essential terms of the loan?
- 24 A. Right. Exactly. When we talked about it earlier, this
25 has the details of how much, when and all of that? 09:37:32

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JOHN LOTARDO - Direct

- 1 Q. And the third paragraph that begins July 24, 1999, what 09:37:37
2 does that say?
- 3 A. Well, that says on July 24, 1999, which is basically one
4 year from the close of the escrow, when they have completed the
5 sale, the maker, that's the borrower, shall pay a principal 09:37:51
6 reduction in the amount of \$25,000 at the time and the
7 remaining unpaid principal balance shall be re-amortized over
8 30 years at seven and a half percent per annum.
- 9 Q. Okay. And so that's the additional \$25,000 deposit that
10 we've discussed? 09:38:12
- 11 A. Well, this is over and above. This is the one that they
12 pay a year later, meaning you are making normal month payments
13 but what this lender, the seller did, is, hey, in a year from
14 now I want you to basically pay down the loan 25 grand, meaning
15 I want you to put more money into the deal a year from now. So 09:38:31
16 in a year from closing, give us an additional \$25,000 one-time
17 payment and then we'll readjust the payment schedule and the
18 interest and all of that.
- 19 Q. Okay. And then the date in the paragraph right below
20 that, it says July 24, 2003, what is that date? 09:38:57
- 21 A. Well, what we call that is the all due and payable date
22 and the reason why we call it that is because it says there.
23 The rest that is owed shall be due and payable July 24, 2003,
24 which is basically five years later.
- 25 Q. Is this what is kind of loan referred to as a balloon 09:39:17

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JOHN LOTARDO - Direct

1 payment? 09:39:19

2 A. Yes. This is a balloon payment, the all-due date. This
3 is typical on these kind of transactions.

4 Q. Okay. And then at the bottom it's signed again by the
5 trust manager? 09:39:29

6 A. Right, exactly. James R. Parker is the trust manager.

7 Q. And then on the side of the -- there's what looks like a
8 small handwritten note; is that correct?

9 A. Yes, up on the side there. There's some handwritten
10 notes, probably that were found in the file. 09:39:41

11 Q. Okay. The three aspects to this loan, the 50,000 original
12 deposit and the 25,000 additional one year later deposit, let's
13 look at those checks. Let's go to page 13 of Exhibit 556 and
14 if we could just highlight the top portion. And this is --
15 this receipt reflects, what does this receipt reflect? 09:40:35

16 A. That's -- remember at the beginning the first earnest
17 money deposit there, the first good faith deposit of \$50,000,
18 that is what this represents, that initial deposit when they
19 started the contract.

20 Q. Okay. That's that initial 50,000? 09:40:50

21 A. Yeah.

22 Q. And then let's go to, if we can, go to the entire screen.
23 It looks like there that is a copy of the check.

24 A. If you look at it, it's kind of overlaid onto the receipt.
25 It was probably stapled together probably at the time. So 09:41:07

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JOHN LOTARDO - Direct

1 there's the check that it shows that it was deposited and then 09:41:11
2 the rest of the document is the receipt that it did come in.
3 Q. Okay. Let's go to Exhibit 554, page two. If we could
4 rotate that check. And this is the second 25,000 deposit. If
5 we could just highlight or focus in on the top half of the 09:41:44
6 green. Who is this made to the order of?
7 A. That was made to Stewart Title & Trust. It's my company.
8 Q. And is the date -- it looks like July 19, 1999?
9 A. Yes. This is -- it looks like this would correspond to
10 that. Make a principal one-time additional payment of \$25,000 09:42:07
11 a year later from close of escrow. That's what the \$25,000
12 would represent.
13 Q. And at the top of the -- above Stewart Title & Trust there
14 seems to be the check that -- the holder of the check. Can you
15 just read that to us, please. 09:42:26
16 A. MacKinnon Belize Land and Development Limited.
17 Q. And then at the bottom of the check, it looks like it's
18 that same signature of the general manager.
19 A. Yes. If you look on the bottom right, yeah, that looks
20 like the same James Parker signature that we saw on those other 09:42:42
21 documents.
22 Q. I don't know if you can read the full account number on
23 the bottom of the check, can you read that to us?
24 A. I think it's 981-20673-0.
25 Q. I mean, the account number on the check itself, 252? 09:42:58

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JOHN LOTARDO - Direct

- 1 A. Let's see. Down on the bottom there. Yeah, that number 09:43:03
2 is, like -- it looks like 25492-01 and I can't quite read it on
3 there. Probably one six or one eight or something like that.
- 4 Q. Okay. Let's turn to Exhibit 558. Can you just read us
5 what this says or can you tell us what this exhibit means? 09:43:38
- 6 A. Well, it's a supplemental escrow instruction, so I'm
7 thinking this is a part of the 1998 transaction we've been
8 talking about. And it just says on here that buyer
9 acknowledges that due to quick close of escrow, buyer has not
10 received a copy of the preliminary title report or CC&Rs and 09:43:58
11 hereby waives prior approval subject only to receiving free and
12 clear title to subject property.
- 13 Q. And it looks like the same or similar signature?
- 14 A. Right. Exactly.
- 15 Q. I want to now move past this first 1998 loan and I want to 09:44:21
16 ask you a question about Government's Exhibit 119 which I think
17 has been admitted. This is another warranty deed that is
18 similar to what we looked at. Can you tell us the date of the
19 warranty deed?
- 20 A. Well, there's a dated date and a recording date. In the 09:44:50
21 middle of it, it talks that it was dated August 5 of 2002 and
22 then it was recorded a couple days later, August 9, 2002.
- 23 Q. If you could focus in on the top portion of the exhibit.
24 This again, this is a certified copy from the
25 Maricopa County Recorder on -- for an August 9; is that right? 09:45:17

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JOHN LOTARDO - Direct

- 1 A. That's right. 09:45:22
- 2 Q. And can you tell us in this case who is the grantor and
3 who is the grantee or who is the --
- 4 A. Right, exactly. Well, if you go back, this is a warranty
5 deed, which is when you're transferring title to a piece of 09:45:34
6 property. So you have the grantors. These are the people
7 selling the property or transferring title. They are the ones
8 that have title and are transferring. And that is the Rachel
9 T. Parker Harris, Trustee, and James R. Parker, Trust Manager,
10 under Cornerstone Resource Trust dated June 22, 1994, and they 09:45:52
11 list their addresses.
- 12 Q. If we could just focus on those paragraphs.
- 13 A. And then if you go into the second sentence, it says, "Do
14 appear by convey and warrant to grantee Sunlight Financial,
15 LLC," which is an Arizona limited liability partnership and 09:46:12
16 then it has their address.
- 17 Q. And this is for that same property. It's commonly known
18 as a 35802 North Meander Way?
- 19 A. Right. Exactly. Below there it has all of the details on
20 the deed. 09:46:28
- 21 Q. Does the document reflect the recording of the transfer of
22 title from Cornerstone represented by Rachel Parker and James
23 Parker to this Sunlight Financial?
- 24 A. Right. That's what this document does.
- 25 Q. There's no reference in this document to any kind of 09:46:43

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JOHN LOTARDO - Direct

1 mortgage or anything like that. 09:46:44

2 A. No. I mean, that's a different document. That is that
3 other document we talked about which was a deed of trust that
4 we usually call mortgage or something like that. That is a
5 different document. This is just transfer of title. 09:46:55

6 Q. Okay. By the way, this warranty deed, August 9, 2002
7 warranty deed, did Stewart Title play any role in this warranty
8 deed?

9 A. I don't think so. Because if you look at the top it says
10 TransNation Title Insurance so somebody else recorded it for 09:47:17
11 them.

12 Q. Let's now go to the next loan that Stewart Title helped
13 with regards to the same property and I want to direct your
14 attention to the July 21, 2003, loan and also to Government's
15 Exhibit 120, page two. And if we could just focus in on the 09:47:31
16 top half of the document. What does this deed of trust
17 represent?

18 A. Well, this is basically just like the other deed of trust.
19 It's a mortgage. It's the loan, shall we say. It's the
20 document that records in the county records that shows that 09:47:53
21 someone lent them some money and it's secured against this
22 property.

23 Q. And what's the date in the top right-hand corner?

24 A. Well, when it was recorded it was recorded July 31 of
25 2003. 09:48:10

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JOHN LOTARDO - Direct

1 Q. And can you tell us who the parties are in this loan? 09:48:18

2 A. Well, you could see who the Sunlight Financial is, the

3 trustor. They are the borrower, and remember looking at the

4 document before, they are the ones that held Title so they are

5 basically getting a loan from the beneficiary lender. I'm not 09:48:31

6 sure. Called many different things. That's Universal

7 Properties. And the Universal Properties is the one that is

8 acting as the lender here.

9 Q. Let me ask you a question. Why is Universal Properties at

10 this stage using Stewart Title? And I see the name of your 09:48:50

11 company at the top of the screen. Why are they using you guys?

12 Why don't they just lend the money to Sunlight?

13 A. That's why we're in business. We go and check for lenders

14 to make sure that they know when they are lending money to

15 someone, in this case Sunlight Financial, that they do own the 09:49:08

16 title, that -- if there are any other loans on the property,

17 that they know about them or -- anything like that. We check

18 the title records for them to make sure that gets taken care

19 of.

20 Q. Okay. Let's go now to the bottom portion of the screen 09:49:24

21 and can you tell us the amount of the loan?

22 A. If you go through the middle section of it, it shows that

23 it's \$355,000.

24 Q. In this case there's no warranty deed in this particular

25 transaction. How come? 09:49:47

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JOHN LOTARDO - Direct

1 A. Well, because the title holder wasn't selling. They were 09:49:49
2 just borrowing money.

3 Q. And that's against the value of the house?

4 A. Right. Exactly.

5 Q. Did Stewart Title play a role in offering other business 09:49:59
6 services with respect to this loan?

7 A. Well, probably. If you remember some of the things we do,
8 we handle the escrow transaction. We handle some of the
9 paperwork, some of the, you know, coordinating the money, the
10 title records. And then also, if I recall correctly, this is 09:50:15
11 one of the loans that were what I call serviced. The payments
12 were processed through us.

13 Q. Let's go to government Exhibit 551, page two. And if we
14 could just focus on the letter.

15 This document was found in your records from Stewart 09:50:40
16 Title and the letterhead at the top reads Robert Dietrich.

17 A. Exactly. It's a letter that Dietrich wrote to Mr. Parker
18 and the document explains -- has some conversation in there?

19 Q. Okay.

20 MR. SEXTON: I think it's a little small. You might 09:51:03
21 want to enlarge parts of it so the jury can see it.

22 BY MR. PERKEL:

23 Q. We can just focus in on the first paragraph in the top or
24 going from the top down to the first paragraph.

25 And the date of the letter? 09:51:22

JOHN LOTARDO - Direct

- 1 A. It's July 22, 2003. 09:51:23
- 2 Q. And can you just read the first paragraph of the letter.
- 3 A. "Dear Mr. Parker: This letter confirming our phone call
- 4 of Monday, July 21, 2003. Since the sale of the property to
- 5 you back in July of 1998, both of the settlers of the Robert 09:51:35
- 6 W. Dietrich and Berniece S. Dietrich Revocable Trust have
- 7 passed away. As you can imagine, the beneficiaries have their
- 8 own plans for how to invest the money that they will be
- 9 receiving. As such, I am not in a position to make a
- 10 significant extension of the due date for the balloon, beyond 09:51:55
- 11 the one week you requested. Instead of the balloon being due
- 12 July 24, 2003, it will now be due July 31, 2003."
- 13 Q. So it looks like Dietrich gave Mr. Parker a week
- 14 extension.
- 15 A. Right. If you remember the first loan, they had that loan 09:52:11
- 16 that became all due July 2003. This is the time when it
- 17 becomes due, they got a one-week extension.
- 18 Q. Okay.
- 19 And, again, it looks like there's a handwritten note
- 20 at the bottom from -- with the name Jim? 09:52:29
- 21 A. Yes. It says Jim. Yeah. They are basically referencing
- 22 that to someone, identifying some comments regarding what is up
- 23 above.
- 24 Q. Okay. Let's go to Exhibit 552, page three. Now, we
- 25 talked about the balloon payment coming due and that's the 09:53:02

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JOHN LOTARDO - Direct

- 1 balloon payment for the 1998 loan? 09:53:04
- 2 A. That's correct.
- 3 Q. And it's coming due now at the end of July. Can you tell
4 us this document that was in your record, what does it mean?
- 5 A. You see up at the top it says payoff calculations. I love 09:53:14
6 titles. It helps. The payoff calculations is it is all coming
7 due. So what they needed to figure out, how much was all due.
8 There was payments made, interest calculations. So remember we
9 were servicing it, so we were handling the payment processing.
- 10 So that is what this document is kind of explaining, 09:53:35
11 what those amounts will be due when it becomes due at the 31st
12 of July.
- 13 Q. And the servicing, just to make sure it's clear, when you
14 say servicing, is the borrower paying Stewart Title and then
15 Stewart Title forwards that money on to the original loaner; is 09:53:55
16 that right?
- 17 A. Right. I mean, kind of a clerical payment processing
18 center, not very, you know, sophisticated. Make payments in.
19 Payments are applied, and then payments are sent out.
- 20 Q. What do borrowers use or why do people or institutions 09:54:12
21 that lend money or investors, why do they use that service?
22 Why don't they have just have the borrower directly send the
23 money to them?
- 24 A. Two different reasons; right? If you are making a
25 payment, you want to have proof that you made the payment and 09:54:25

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1 when you made it, on time. And so that helps because you have 09:54:30
2 this third party showing okay, the money came in on time and it
3 got properly credited.

4 The lender, who wants to make sure that the payments
5 get in on time and that it's properly accurate, they use a 09:54:46
6 service, too. So it's to help identify when and how much money
7 came in, when and how much money goes out?

8 Q. All right. And the first line under account data, it says
9 Parker pays Dietrich trustee.

10 A. Right. 09:55:04

11 Q. Is that just sort of the payoff amount or is that of
12 the --

13 A. That's just the account so you kind of know who the
14 parties are and like it sounds, it's the Parker group that we
15 have been talking about pays the Dietrich group that we have 09:55:14
16 been talking about.

17 Q. And now let's go to the bottom portion of the page where
18 there's the details of the payment amount. So of the original
19 \$3 -- excuse me, the original \$375 loan from 1998, what is the
20 payoff amount approximately in the end of July? 09:55:34

21 A. Well, you go to the bottom, that's kind of the calculation
22 with all of that other stuff we talked about is \$338,344.76.

23 Q. Now, once that money gets paid out, who does Stewart Title
24 pay?

25 A. Well, some of it goes to us because we earned a fee for 09:55:56

United States District Court

JOHN LOTARDO - Direct

1 what we are doing, doing all of this payment processing; but 09:56:00
2 all the rest of the money, it goes to the lender, the party who
3 lent the money.

4 Q. So in this case, the original lender, the Dietrichs?
5 A. Yes. Right. Exactly. They are the ones that get the 09:56:12
6 bulk of the money, of course.

7 Q. Let's go to Government's Exhibit 147. Actually, let's
8 back out of there. That's the wrong exhibit. It should be
9 Exhibit 174, I'm sorry. There we go. This is the promissory
10 note for the \$355,000 loan? 09:56:43
11 A. Yes, it sure.

12 Q. I'm not going to go through all of the paragraphs. What
13 is a promissory note?
14 A. Well, this is the specific terms that explained how much
15 was borrowed and what the payment will be, what the interest 09:57:03
16 rate will be between the borrower, who was Sunlight, and
17 Universal Properties, who was the lender.

18 Q. If we could click out of there. Let's go to Exhibit 561,
19 page two. If we could -- and this is, it look like another HUD
20 or settlement statement. 09:57:48
21 A. Right. Exactly.

22 Q. So what is this HUD settlement statement? This is for the
23 2003 loan?
24 A. Right. If you look, this is the one which is basically
25 identifying the amounts and so forth for this 2003 -- I call it 09:57:59

United States District Court

JOHN LOTARDO - Direct

1 a refinance because basically you reif'd the prior loan with 09:58:05
2 this new loan.

3 Q. So the 2003 refinance involves the borrower, Sunlight, and
4 lender, Universal, that we just discussed?

5 A. Right. Exactly. 09:58:17

6 Q. And then, again, the same property location?

7 A. Yes, m'hum.

8 Q. And the date I think -- the settlement date is July 31 of
9 '03?

10 A. Right. Exactly. 09:58:29

11 Q. All right. Let's go to -- let's just go to the full
12 screen and there's a -- sort of the bottom half. You can see
13 the payoff -- is there a payoff amount that is to Stewart Title
14 that would then be forwarded to the Dietrich family?

15 A. If you look at the screen towards the top, it talks about 09:58:53
16 the payoff to Stewart Title on like line 104 on the HUD. That
17 is the payoff number. Remember we talked about earlier the
18 payoff figures that we talked about a few moments ago on the
19 payoff calculation. That's the payoff to Stewart Title's
20 account servicing. Does that make sense, account servicing 09:59:13
21 department for that loan?

22 Q. And so after this -- after the \$355,000 loan and Stewart
23 Title pays off the Dietrich family from the refinance,
24 Dietrichs are no longer involved with this loan. They have
25 just been paid off; is that right? 09:59:33

United States District Court

JOHN LOTARDO - Direct

1 A. Right. Yeah. You get paid what you are owed and you are 09:59:34
2 done and you move on.

3 Q. Okay. Let's take a look at Exhibit 560, page two and the
4 top portion. And what is this document, what does it mean, the
5 account servicing agreement? 10:00:03

6 A. Well, account servicing, remember I mentioned we have
7 different departments. One is the processing of the payments
8 and that's the account servicing is the payment servicing
9 portion of Stewart Title and that is -- this is the agreement
10 with the parties about what they are doing, what the fees are 10:00:17
11 to do this, that kind of thing.

12 Q. And what's the date of this one?

13 A. This is also in July 2003, so this was the servicing
14 agreement for this new loan that just got put on.

15 Q. Let's go to Exhibit 549, page two. What does -- this is a 10:00:36
16 document from Stewart Title to James Parker. What is this kind
17 of document for?

18 A. It just is a breakdown to give an idea of what the
19 quarterly payments would be. So if you look at it, it's just
20 kind of a -- it's a breakdown of what the payment represents. 10:01:02

21 Q. Okay. And the total payment on this document reflects
22 \$11,440 payment?

23 A. Right. Exactly.

24 Q. And let's go to Exhibit 548, page two. This is another
25 letter from Stewart Title. What's the date of this letter? 10:01:27

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JOHN LOTARDO - Direct

- 1 A. Well, the original date is August 7, 2003, and this was 10:01:35
2 the letter -- basically, it's part of that transaction that
3 closed like the week before. From the escrow side, it's part
4 of the refinance. Basically, I kind of call it the goodbye
5 letter. Here's copies of your documents for the refinance. 10:01:56
6 Here's a couple of the copies of the documents, the promissory
7 note, loan agreement, closing statement, and this is that
8 document that gets sent out to the borrower from the escrow
9 side after you've completed your refinance.
- 10 Q. And in this case, who was it sent to? 10:02:11
- 11 A. That was sent to Rachel Parker, Sunlight Financial.
- 12 Q. And then in the top right-hand corner it looks like there
13 was a return for -- a handwritten return.
- 14 A. Yeah. It looks like this was probably faxed over back to
15 Stewart Title. But this would have gone to Riceo was actually 10:02:30
16 in account servicing. This would have been sent to Riceo in
17 account servicing who is the one that does the payment
18 servicing, the servicing of the payments.
- 19 Q. So you recognize the -- sort of the name, Attention:
20 Riceo? 10:02:50
- 21 A. Exactly. I know who that individual is.
- 22 Q. And what is the date of the fax?
- 23 A. Go up on the top. It's October 29 of '03 it looks like.
- 24 Q. And the fax appears to come from who, for the record?
- 25 A. Well, if you look at it, it says attention Riceo from 10:03:08

United States District Court

JOHN LOTARDO - Direct

1 James Parker. So it came from James Parker. 10:03:10

2 Q. I don't know if you can even read that. What does it say
3 underneath James Parker?

4 A. "Please fax coupon showing principal and interest due to"
5 this following fax number. That is the -- when people are 10:03:24

6 making payments, they usually like to have -- back then they
7 did used to use coupon booklets. You used to tear it out and
8 send it in with your monthly payment or quarterly payment.

9 It's the same kind of thing. We would -- at least back then
10 certainly would basically prepare coupon booklets for people 10:03:41

11 and so that's what he's asking for. Some people don't like
12 making payments until they have their coupon.

13 Q. Okay. Let's move on from the 2003 loan.

14 Let's go to Exhibit 166, page two. What is the date
15 at the top of this record from Maricopa County Recorder? 10:04:27

16 A. This looks like it was recorded February 14, 2004.

17 Q. This is not a loan that Stewart Title facilitated;
18 correct?

19 A. No. It doesn't look like it's one that we would have
20 done, you know, or prepared or participated in. 10:04:48

21 Q. And then what is the -- just briefly, what does this deed
22 of trust tell you. What's the amount and the parties involved?

23 A. Once again, this looks like a loan, a mortgage or
24 whatever, which was given or was basically Sunlight borrowed
25 money from Omega Construction it looks like. They might have 10:05:12

JOHN LOTARDO - Direct

1 been the lender and Sunlight being the borrower? 10:05:20

2 Q. So Omega loaning money to Sunlight.

3 A. Yes.

4 Q. And then if we could go to the middle portion of the page

5 under the word "witness," what's the amount that is referenced 10:05:28

6 as the loan amount?

7 A. \$296,000.

8 Q. And, again, this deed of trust or the loan is -- the

9 record reflects the security against that same property; is

10 that right? 10:05:46

11 A. That's right. Yeah. If you scrolled up and looked a

12 little bit at part of the legal description, it would have some

13 more of those details in a different section of the document.

14 Q. Okay.

15 And although Stewart Title didn't service this loan, 10:06:01

16 this \$296,000, we're going to now jump to the 2005 loan. When

17 doing a title search on the 2005 loan, this is a document that

18 Stewart Title would have looked at. Is that fair to say?

19 A. Exactly. I mean, I'm assuming it didn't get paid off or

20 released within that same year. You would pick this up on the 10:06:21

21 title records because the records would show this. This is a

22 good thing to find because you want to know if there's one loan

23 against the property, two loans or five loans.

24 Q. Why does that make a difference?

25 A. Well, if you are going to loan -- if you're going to loan 10:06:33

JOHN LOTARDO - Direct

- 1 money against a property that is worth \$100 and it has \$99 10:06:36
2 against it, you don't want to give another \$100. I mean, the
3 same kind of idea. Or if you're buying a piece of property,
4 you're going to want to make sure that all of that \$99 gets
5 paid off before you buy it. 10:06:51
- 6 Q. Okay. Finally, let's turn now to the August 2005 loan.
7 I'm going to direct your attention to Exhibit 121 and that is
8 page two of the exhibit. Just the top portion of the exhibit.
9 In this case, what's the date that the deed of trust was
10 recorded reflecting this mortgage or this refinance? 10:07:33
- 11 A. This was August 16, 2005.
- 12 Q. And who are the lenders in this case?
- 13 A. The lender in this case is the same one from before. If
14 you look, it's Universal Properties.
- 15 Q. Okay. Is this the same parties to the \$355,000 loan? 10:07:52
- 16 A. Yeah. If you remember that one from two years ago, it's
17 the same borrower and the same lender.
- 18 Q. Okay. And, again, Stewart Title helped facilitate this
19 loan is that fair to say?
- 20 A. Yes. Right. 10:08:08
- 21 Q. And the -- does this involve the same property if we could
22 click out of there and go to the middle section.
- 23 A. Yes. It sure is. That's the same lot, 503 over in
24 Carefree.
- 25 Q. And what is the amount of money that is being loaned as 10:08:25

United States District Court

JOHN LOTARDO - Direct

1 reflected by this deed of trust? 10:08:29

2 A. That is the \$1.5 million.

3 Q. I see. That is paragraph B?

4 A. M'hum.

5 Q. Let's turn now to page 30 of Government's Exhibit 115. 10:08:59

6 And this is the promissory note between the borrower and the

7 creditor?

8 A. Right. The promissory note that goes with the deed of

9 trust that explains the terms and the interest rate and the

10 payments that are secured by the deed of trust that we just 10:09:29

11 talked about.

12 Q. And it's the same \$1.5 million loan.

13 A. Right.

14 Q. Let's go to the third paragraph of this page and when it

15 says, "Maker shall pay interest-only payments," what does that 10:09:48

16 mean?

17 A. It means that the borrower is going to only make the

18 payment which represents the interest that is due at that time

19 whenever that payment is due, so meaning you're not reducing

20 the balance that is owed. You are basically only paying the 10:10:09

21 interest.

22 Q. And let's go to Exhibit 547, page two. If we could just

23 focus on the top portion, great. Is this another payoff

24 calculation?

25 A. Yeah. If you look at it, it's 2005 and it looks like 10:10:36

United States District Court

JOHN LOTARDO - Direct

- 1 there was a -- you can't read it, but it's payoff calculations. 10:10:39
2 It's kind of stamped over the preprinted form, but on the top
3 it says payoff calculation so it's another one of those payoff
4 calculations that the account servicing department did for them
5 in 2005. 10:10:58
- 6 Q. Okay. And the first line, again, where it says account
7 data, that just reads -- that just reflects the parties?
- 8 A. Right. This account, Sunlight Financial is listed as the
9 borrower. Universal Properties as the lender. This is for the
10 2003 loan that Sunlight got from Universal. 10:11:18
- 11 Q. Okay. Right. This is a payoff to pay off the 2003?
- 12 A. Right. Exactly.
- 13 Q. And let's go to the bottom portion of the page under the
14 detail data. So we can see the current balance of 355, that's
15 the balance on August, August of 2005? 10:11:40
- 16 A. Right, yes.
- 17 Q. So the previous loan was an interest-only loan as well?
- 18 A. Yeah. It looks like it would have been.
- 19 Q. And so now the \$1.5 million loan is going to include a
20 payoff on the previous loan? 10:11:56
- 21 A. Right. Basically, it's kind of like restructuring. You
22 go to the same lender and say, "Okay. I owe you money on this
23 one. Let's kind of roll it into a new loan. Let's make it a
24 little more and roll it into a whole other loan."
- 25 Q. And then we give an approximation of the payoff amount of 10:12:10

United States District Court

JOHN LOTARDO - Direct

1 about 377? 10:12:13

2 A. Right. If you go down there, \$377,750.99.

3 Q. Let's go to government Exhibit 149, page two. And, then,

4 this is the third settlement statement that we've looked at

5 today. Is this the settlement statement that applies to the 10:12:45

6 August 2005 loan?

7 A. Yeah. That's what it looks like. It looks like this is

8 the -- I call it -- I would call it the 2005 refinance.

9 Q. Okay. 2005 refinance. And the name of the borrower again

10 is listed as Sunlight? 10:13:02

11 A. Exactly. It's the same title, Sunlight Financial, same

12 Universal Properties.

13 Q. And then the property location again, same location;

14 right?

15 A. Right. The one on North Meander Way, m'hum. 10:13:11

16 Q. Now, let's go to the bottom portion of this document

17 starting actually a little bit above summary of the activity.

18 Let's go to line 104. I don't know if you can see it.

19 Can you read that, the payoff to Stewart Title?

20 A. It's listed as a payoff to Stewart Title for the three -- 10:13:44

21 let's see, \$356,450.99.

22 Q. That's really the payoff of the previous loan; is that --

23 A. That's the number that represents the payoff for that '03

24 loan.

25 Q. And then what is the new loan, the new loan amount before 10:14:01

JOHN LOTARDO - Direct

1 the payoff? 10:14:07

2 A. Obviously, the new loan is the 1,500,000 so that's the new
3 loan amount.

4 Q. And that's in line 202?

5 A. Yes. 10:14:16

6 Q. And then with the payoff and then some settlement charges
7 of \$11,000, what is, sort of, the net cash to the borrower,
8 Sunlight Financial, in this case?

9 A. Well, it's at the very bottom of the screen. That talks
10 about the \$1,132,258.42. So, basically, like, \$1.1 million was 10:14:29
11 cashed out of this.

12 Q. When we talk about refinance and rolling previous loans
13 into new loans, is that something that happens? Is that what
14 people do sometimes?

15 A. Right. You go to one lender. It works out. You want 10:14:49
16 some more from the same lender on the same property and they
17 will lend you more money.

18 Q. So even though the lender nets out at -- the borrower nets
19 out at about 1.1 million in cash, he, though, is still paying
20 full interest on the 1.5 million loan? 10:15:08

21 A. Right. Kind of a term of art where you roll your prior
22 obligation into the new one. You don't get a whole -- you are
23 rolling it in so you are using parts of the new loan to pay off
24 the prior loan. Makes sense?

25 Q. M'hum. 10:15:24

JOHN LOTARDO - Direct

- 1 And let's go to Government's Exhibit 150. Let's go 10:15:25
2 to the -- let's go to the receipts posted section. What is
3 this, by the way? What does this final disbursement report
4 mean?
- 5 A. If you remember, the HUD showed you the snapshot of what 10:15:51
6 all of the final numbers were? This disbursement, this is just
7 the record in the escrow branch when they are handling the
8 money, what money came into their file, what money went out,
9 you know, like what checks did they cut.
- 10 Q. And so in this case, the incoming flows, which are the 10:16:07
11 receipts posted, those are the three parties to the receipts
12 posted?
- 13 A. That's right. This is the parties that -- basically,
14 Universal Properties and their principals deposited the money
15 that was being lent to the borrower. So the lender deposits 10:16:23
16 their money in to us and they basically allow us to release the
17 money back out to the borrower.
- 18 Q. So you sort of act in this case as the middleman between
19 that -- between the lender and the borrower?
- 20 A. Right. That's what we do. I mean, they want to make sure 10:16:40
21 that before the money gets released, their loan is secured and
22 protected on the property so that's why they use us.
- 23 Q. And I see the 1.145 is the total amount of receipts
24 posted. Again, it's not the 1.5 million because the 355 was
25 sort of rolled in there. 10:17:00

United States District Court

JOHN LOTARDO - Direct

1 A. Yeah. It's kind of what's called like net funding where 10:17:01
2 basically, okay, we're rolling that 300 plus thousand into this
3 new loan so what that means, basically, you're netting 1.1
4 million. That is basically how it happens when you roll the
5 prior obligation in. 10:17:18

6 Q. And let's go to the bottom half of the screen and just the
7 disbursements. Let's focus in on the three disbursements to
8 Sunlight Financial. It looks like three checks in lines four
9 through six.

10 A. Right. Yeah. If you look, there was basically the moneys 10:17:40
11 were deposited and then the money gets sent out to the
12 borrower. For some reason they wrote three separate checks. I
13 mean, I can't tell why. But more than likely, the borrower at
14 the time, Sunlight Financial, wanted the checks cut in three
15 batches. I don't know why. 10:18:04

16 Q. Okay. Let's look at the checks. Let's look on
17 Government's Exhibit 151, page two. And let's just look at the
18 top check. Is this just one of the checks that was cut after
19 the 2005 refinance?

20 A. Yes. 10:18:34

21 Q. And can you tell us the date of the check?

22 A. Yeah. That was -- it looks like it's August 16, 2005.

23 Q. And the amount?

24 A. \$377,419.47.

25 Q. And again, I see Stewart Title & Trust is at the top of 10:18:49

JOHN LOTARDO - Direct

- 1 the check so that's one of your checks. 10:18:57
- 2 A. Yeah. That would have been out of the escrow branch when
3 they are closing in. They are disbursing the money, that
4 branch that handled that.
- 5 Q. Let's look at the back of check. In the middle of the 10:19:04
6 check you can see where it was endorsed or where it was
7 deposited, what bank?
- 8 A. It looks like it's Amarillo National Bank it looks like
9 stamped in the middle.
- 10 Q. And on the side of the check you can see the endorsement; 10:19:31
11 is that correct?
- 12 A. Right. Yeah. If you look at the signature on the other
13 side there, like when you make -- when you the deposit checks,
14 you know, you sign it. So that's the endorsement right there.
- 15 Q. And it says pay to the order of -- can you read what that 10:19:45
16 says, pay to the order of?
- 17 A. "Pay to the order of," I think it says, "RSI Investments
18 by," and then it's, "Rachel T. Harris, Manager, Sunlight
19 Financial, LLP."
- 20 Q. Let's go to Government's Exhibit 152, page two. And let's 10:20:04
21 just highlight the top check again. This is just another one
22 of the same checks. Is that fair to say?
- 23 A. Yeah. This looks like it's the one of the other -- one of
24 the other -- it's one of the three checks. This is the second.
- 25 Q. Let's go to the endorsement side of the check. And, 10:20:30

United States District Court

JOHN LOTARDO - Direct

1 again, this looks like the same information as from the 10:20:39
2 previous check. If we could rotate the check.

3 And at the top where it says, "Pay to the order," is
4 this a little clearer this copy; right?

5 A. Yes. "Pay to the order of RSJ," it looks like this time, 10:20:56
6 "Investments."

7 Q. And it looks like it's signed by Rachel Harris as the
8 manager of Sunlight?

9 A. Yes. So they just endorsed the check over before
10 depositing it. 10:21:14

11 Q. And finally let's look at Exhibit 153, page two. It looks
12 like it's the third check in that series of three checks; is
13 that right?

14 A. Yes.

15 Q. 377,000 approximately? 10:21:30

16 A. Correct.

17 Q. And let's just go to the endorsement side and it looks
18 like the same bank, Amarillo National Bank?

19 A. Yes.

20 Q. All right. And let's take a look at the top part. 10:21:51

21 A. It looks like the same type of endorsement like the
22 others, to RSJ Investments, and then it's signed by Rachel T.
23 Harris, manager for Sunlight.

24 Q. And, again, with regards to this 2005 loan, \$1.5 million
25 loan, your company was also involved in the collection process 10:22:20

JOHN LOTARDO - Direct

1 of the interest payments on that loan? 10:22:26

2 A. Right, for Universal Properties, we were handling the

3 payment, processing of the payments for the first one. So when

4 they made the bigger loan, we basically -- they did asked us to

5 do it so we handled the servicing, the payments, for the larger 10:22:33

6 loan.

7 Q. Thank you.

8 MR. PERKEL: Your Honor, could I have one moment,

9 please.

10 I have no further questions, thank you. 10:22:41

11 THE COURT: All right. We're going to take a break.

12 How much time are you going to take, Mr. Minns?

13 MR. MINNS: I'm guessing 30 minutes.

14 THE COURT: All right. We'll take a break. 20

15 minutes, ladies and gentlemen. We're in recess. 10:22:50

16 COURTROOM DEPUTY: All rise.

17 (Jury departs.)

18 (Recess at 10:22; resumed at 10:44.)

19 (Jury enters.)

20 (Court was called to order by the courtroom deputy.) 10:44:22

21 THE COURT: Please be seated.

22 All right. Mr. Minns?

23 MR. MINNS: The laster juror is seated.

24 May I proceed, Your Honor?

25 THE COURT: Yes. 10:45:17

United States District Court

JOHN LOTARDO - Cross

CROSS - EXAMINATION

10:45:18

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BY MR. MINNS:

Q. Mr. Lotardo, I am Michael Minns. I represent Jim Parker. I think we just shook hands about 18, 19 seconds ago for the first time.

A. That's correct.

Q. I assumed from your expertise that you had taught. I asked you if you had done some teaching and you said you had done a great deal of teaching lawyers and teachers and other people things about things such as change of title?

A. Right. Yeah, either in the community or part of continuing education.

Q. When a father puts a home in an irrevocable trust for the benefit of his kids and gives them a full grantor deed with no reservation of rights and he is not a trustee, the trust, then, owns the property; correct?

MR. PERKEL: Objection, Your Honor. This is a fact custodian witness. No experts.

THE COURT: I am going to overrule it as background to other questions that related to the documentation that has been admitted. So we will see. If you're using him as an expert, Mr. Minns, I won't allow it.

MR. MINNS: My intention, Your Honor, is to ask his opinions on the things he's already given expert opinions on, which is extensive.

10:45:30
10:45:51
10:46:19
10:46:38
10:46:56

JOHN LOTARDO - Cross

1 THE COURT: He hasn't given expert opinions on trusts 10:46:59
2 and I will not allow that.

3 So in that respect, it's sustained.

4 MR. MINNS: But he is allowed to answer this one
5 question, Your Honor? 10:47:10

6 THE COURT: Only if it's introductory to
7 documentation.

8 MR. MINNS: Yes. Thank you, Your Honor.

9 THE COURT: And, for example, are you going to point
10 him to various documents? 10:47:18

11 MR. MINNS: Your Honor, I have various documents to
12 point him to.

13 THE COURT: Okay. He can answer this question then.
14 Can you answer it, assuming that you can.

15 THE WITNESS: I believe so, Your Honor. 10:47:31

16 But perhaps you can restate it briefly once more just
17 so I make sure I understand whether it's a yes or a no to the
18 question.

19 THE COURT: You may restate the question.

20 MR. MINNS: Thank you, Your Honor. 10:47:40

21 BY MR. MINNS:

22 Q. When a father puts a home in an irrevocable trust for the
23 benefit of his kids with a full grantor deed with no
24 reservation of rights and he is not a trustee -- well, scratch
25 that. I'll leave that part out. He no longer owns the legal 10:47:57

JOHN LOTARDO - Cross

1 interest in the property; correct? 10:48:01

2 MR. PERKEL: Objection. Same objection, Your Honor.

3 THE COURT: As I said, I will allow it as
4 introductory to documentation where you ask him questions about
5 the documents. 10:48:14

6 THE WITNESS: Basically, yes.

7 BY MR. MINNS:

8 Q. I'm going to start offering documents and asking questions
9 now. The first document that I'm putting on the screen, with
10 the Court's permission, is Government's Exhibit 556. 10:48:35

11 MR. MINNS: May I publish it?

12 THE COURT: You may.

13 BY MR. MINNS:

14 Q. This is actually the ultimate transaction, the
15 counteroffer, to purchase a piece of property was accepted and
16 this was the deal that went down, was it not? 10:48:54

17 A. This page is the counteroffer. This was the one that
18 countered the original terms and so this was ultimately the
19 terms that were accepted.

20 Q. Okay. And you've already testified to the document about
21 Cornerstone Trust which was created, according to the trust
22 document, which you've testified from, in 1994? 10:49:24

23 MR. PERKEL: Your Honor, I'm going to object. This
24 seems to be testimony and not question.

25 THE COURT: That is. And I will sustain the 10:49:51

United States District Court

JOHN LOTARDO - Cross

1 objection. 10:49:54

2 MR. MINNS: Your Honor, this gentleman testified

3 primarily --

4 THE COURT: Well, Mr. Minns, I have made my ruling.

5 You may ask any questions about the document. If you wish to 10:50:10

6 refresh his recollection, you may do so, but not remind him of

7 what his testimony was.

8 MR. MINNS: May I make a record of this at sidebar,

9 Your Honor?

10 THE COURT: You can make a record at some point but 10:50:45

11 not now.

12 BY MR. MINNS:

13 Q. Now, you've testified on Exhibit 557 to the signature of a

14 trust manager; correct?

15 A. Yeah, that's what this looks like. 10:51:38

16 Q. And that would indicate the existence of a trust?

17 A. Yes.

18 Q. And the trust manager generally manages the trust?

19 A. Correct.

20 Q. The trustee generally signs legal documents and controls 10:51:53

21 the direction of the trust?

22 A. It depends upon each different kind of trust. I mean,

23 sometimes the trustee and the trust manager are one and the

24 same.

25 Q. Absolutely. In this particular case, the trustee was 10:52:09

JOHN LOTARDO - Cross

1 Rachel Harris; correct? I'm publishing, with the Court's 10:52:20
2 permission, Government's Exhibit 120.

3 A. I'm not sure what the question is. That is a different
4 entity than what we were looking at earlier.

5 Q. The entity -- 10:52:49

6 A. Because the Parkers had several different trusts.

7 Q. Yes. The entity that we were looking at earlier --

8 A. I think it was Cornerstone.

9 Q. Yes. And if I may be permitted.

10 -- was Cornerstone and there was a transfer to 10:53:05
11 another entity --

12 MR. PERKEL: Your Honor, I'm going to object.

13 THE COURT: Well, he's asking a question. Overruled.
14 If you ask a question, I'll allow it. But no testimony. You
15 can ask him the question. 10:53:30

16 BY MR. MINNS:

17 Q. -- was transferred to another entity which you have
18 already testified about --

19 MR. PERKEL: Objection, Your Honor.

20 THE COURT: Well, he hasn't finished the question, 10:53:50
21 Mr. Perkel.

22 MR. MINNS: May I proceed, Your Honor?

23 THE COURT: You may. Let me just say, Mr. Minns, as
24 I have said a number of times, make sure you ask a question.
25 Otherwise, you're going to draw my objection. 10:54:09

United States District Court

JOHN LOTARDO - Cross

1 MR. MINNS: May I proceed, Your Honor? 10:54:15

2 THE COURT: You may.

3 BY MR. MINNS:

4 Q. You've already testified under questioning from the
5 government that the Cornerstone house that was in Cornerstone 10:54:28
6 was transferred to another entity. What was the name of that
7 entity?

8 A. I don't recall if I saw the actual deed, but assuming this
9 is the document, assuming it got transferred into Sunlight
10 Financial -- 10:54:55

11 MR. PERKEL: Your Honor, I'm going to object to the
12 diagram that Mr. Minns is drawing. It's testimony. It's
13 argument.

14 THE COURT: No. I'm going to allow it. It records
15 what this witness has already testified to. 10:55:16

16 BY MR. MINNS:

17 Q. And you've testified about the function of Stewart Title
18 and there's another name for the type of testimony that you
19 have given about transferring from one owner to another and
20 it's called chain of title; correct? 10:55:44

21 A. Well, what we're talking about is the chain of title or
22 the history of the title.

23 Q. And the history of the title and the chain of title, how
24 you, as a title expert, determines who owns rights to transfer
25 the property? 10:56:19

JOHN LOTARDO - Cross

1 A. As part of the title examination, we're reviewing the 10:56:23
2 history of the title so we can see who owns the property.

3 Q. And you've testified --

4 MR. MINNS: May I publish Government 551, Your Honor?

5 THE COURT: Yes. 10:56:40

6 BY MR. MINNS:

7 Q. You've testified about a note which is Government's 551
8 and in that, at the government's request, you read, as you can
9 imagine, the beneficiaries have their own plans how to invest
10 the money they will be receiving. 10:57:02

11 MR. PERKEL: Objection, Your Honor.

12 THE COURT: Sustained.

13 Ladies and gentlemen, you are to ignore the last
14 question. It is not a statement or evidence.

15 You may ask a question. 10:57:15

16 MR. MINNS: Yes. If mine is stricken, I ask that the
17 government's previous reading of it be stricken also.

18 THE COURT: Overruled.

19 BY MR. MINNS:

20 Q. The fact of the matter is that the beneficiaries don't 10:57:31
21 always agree with the people who set the trust up; they may
22 have their own designs on the money or the property?

23 MR. PERKEL: Objection, Your Honor. It's seeking an
24 expert opinion. Foundation.

25 THE COURT: Sustained. Sustained. 10:57:45

JOHN LOTARDO - Cross

1 BY MR. MINNS: 10:57:53

2 Q. When you were reading the names of the conveyors of

3 property --

4 A. You mean the grantors?

5 Q. The grantors, yes, sir. 10:58:12

6 A. Okay.

7 Q. You didn't just read the name -- if it was Jim Parker

8 trustee, you didn't read the name Jim Parker. You read the

9 full name on there, Jim Parker, managing trust or trustor;

10 correct? 10:58:31

11 A. Most of the time I read as much of the title as I could.

12 Q. Because the status of the person who transfers or

13 participates in the chain of Title is extremely important to

14 you in your work?

15 A. That's a part of what we do. 10:58:50

16 Q. You must make sure that the person is properly able to

17 sign documents in the chain of title; correct?

18 A. In a general sense, yes.

19 Q. Well, you're guaranteeing that the title is good so if you

20 make a mistake and guarantee the title good and the person 10:59:11

21 doesn't have the legal right to sign the capacity, Stewart

22 Title gets stuck?

23 MR. PERKEL: Objection, Your Honor, as to form.

24 THE COURT: Overruled.

25 THE WITNESS: Yes. 10:59:29

JOHN LOTARDO - Cross

1 BY MR. MINNS: 10:59:29
2 Q. And on Exhibit 121 --
3 MR. MINNS: May I publish the cover page of 121, Your
4 Honor?
5 THE COURT: Yes. 10:59:42
6 BY MR. MINNS:
7 Q. This was between Sunlight, an Arizona limited partnership,
8 and Universal Properties; is that correct?
9 A. Right. Yes. Sunlight Financial was the listed borrower
10 trustor and then Universal was the lender. 11:00:14
11 Q. And you recorded this on the chain of title at the county
12 courthouse; correct?
13 A. Yes. That was the 2005 refinance of the -- yeah.
14 Q. And that created some rights for Universal Properties;
15 correct? 11:00:51
16 A. I think it expanded because they had had the prior -- I
17 think that was the 2005. So it expanded the obligation,
18 increased it.
19 Q. And I'm holding up Exhibit 115.
20 MR. MINNS: If I could approach the witness with it, 11:01:18
21 Your Honor?
22 COURTROOM DEPUTY: He has it already.
23 THE WITNESS: Yes, I do. Direct me to the right
24 page.
25

JOHN LOTARDO - Cross

1 BY MR. MINNS: 11:01:29

2 Q. Do you have Exhibit 115 in front of you?

3 THE COURT: He does have it.

4 THE WITNESS: Yes.

5 BY MR. MINNS: 11:01:35

6 Q. Could you hold it in the air so the jurors could see it?

7 It's much thicker than the deed of trust, is it not?

8 A. Yes, it is.

9 Q. This is the promissory note agreement and everything that

10 is -- that the deed of trust talks about? 11:01:50

11 A. Actually, if I could take a moment to see what it is.

12 Q. Certainly.

13 A. This is several different documents all attached into one

14 exhibit.

15 Q. And they relate to the deed of trust? 11:02:14

16 A. Any number of things. I mean, there's several different

17 documents in there.

18 Q. Okay. Well, normally, these aren't made public, the

19 promissory note instruments and the instruments related to

20 them. They are not normally made public. Normally, the only 11:02:29

21 document that is made public is the deed of trust?

22 A. I think what you're saying is the only document that is

23 recorded is the deed of trust.

24 Q. Yes, sir.

25 A. That's correct. 11:02:43

JOHN LOTARDO - Cross

1 Q. And the deed of trust tells anybody that this is part of 11:02:45
2 the chain of title and they need to check if they are
3 interested in title. They need to check to see if there's
4 other related documents; correct?

5 A. Not necessarily. All it's doing is identifying there is a 11:03:04
6 deed of trust against this property and that based upon what
7 that document says, then you figure out if there's a note or
8 multiple notes against it, who is servicing. I mean, it starts
9 the conversation.

10 Q. Excellent. 11:03:24

11 You've testified about --

12 MR. MINNS: May I publish government Exhibit 554,
13 Your Honor?

14 THE COURT: Yes.

15 BY MR. MINNS: 11:03:34

16 Q. You testified about a check from MacKinnon Belize Land and
17 Development to Stewart Title; correct?

18 A. The check that is up right now, yes.

19 Q. Yes. But you have not testified about MacKinnon Belize
20 Land and Development showing up anywhere on the chain of title. 11:03:50
21 Have you seen any instruments at all today that would put
22 MacKinnon Belize Land and Development in the chain of title?

23 MR. PERKEL: Objection. I think it's MacKinnon.

24 MR. MINNS: If I mispronounced it, I'll go by the
25 government's pronunciation. 11:04:11

United States District Court

JOHN LOTARDO - Cross

1 THE COURT: Okay. Did you see that? 11:04:12

2 THE WITNESS: I believe I pronounced it MacKinnon

3 Belize, dot, dot, dot, and if -- I haven't seen it other than

4 on that check.

5 BY MR. MINNS: 11:04:22

6 Q. So it's not in the chain of title as far as you know?

7 A. Right. But people write checks out of different accounts.

8 It didn't really jump out at me at that point.

9 Q. And there is -- all of the documents that you read,

10 reviewed and testified about today, there was not a single 11:04:42

11 one -- not a single one that identified as being part of that

12 chain of title, Jim Moran individually or just Jim Moran and

13 not trustee or manager or anything else?

14 MR. PERKEL: Objection, foundation. Jim Moran?

15 THE COURT: Sustained on foundation. I don't know 11:05:04

16 who this individual is. Maybe you need to spell the name.

17 MR. MINNS: May I write it out, Your Honor?

18 THE COURT: Yes, you may --

19 MR. MINNS: Oh. I apologize. I apologize, Your

20 Honor. Jim Moran is a minister I represented in 2007. 11:05:25

21 THE COURT: Well, hold, on. Ladies and gentlemen,

22 I'm sure that Mr. Minns did not mean to make that comment as if

23 it was part of the evidence and you are not to consider it as

24 part of the evidence.

25 All right. Mr. Minns. 11:05:48

United States District Court

JOHN LOTARDO - Cross

1 MR. MINNS: I apologize, Your Honor. 11:05:49

2 BY MR. MINNS:

3 Q. Let me correct myself. There's nowhere in the chain of
4 title, no document, no evidence that you have been shown by the
5 government or stored at Stewart Title that places Jim Parker 11:06:08
6 individually anywhere on this chain of title.

7 A. I don't recall seeing it in his name individually from the
8 documents we talked about. I think that's what your question
9 is; right?

10 Q. Yes. 11:06:32

11 A. Okay.

12 Q. And if there is, the government will have the opportunity
13 to show it to you.

14 MR. PERKEL: Objection to the last comment. It's
15 argument. 11:06:40

16 THE COURT: Yes. Sustained.

17 Ladies and gentlemen, the last question, assuming it
18 was one, you are to ignore. It's not evidence.

19 MR. MINNS: May I post the Government's Exhibit 562,
20 please, Your Honor. 11:06:59

21 THE COURT: Yes.

22 BY MR. MINNS:

23 Q. You've already testified about Government Exhibit 562 and
24 I have a couple of additional questions. First of all, you can
25 see the first highlighted line, there's a name and the name -- 11:07:22

JOHN LOTARDO - Cross

1 could you read the name to the jurors, please, as to the first 11:07:30
2 highlighted portion of this, the borrower?
3 A. The borrower?
4 Q. Oh. No. I'm incorrect.
5 A. What would you like me to look at? I think you're only 11:07:45
6 looking at part of the page.
7 Q. I'm completely incompetent with this. Thank you. Yes.
8 You've done this more than me.
9 The name of the borrower is --
10 A. Well, it's listed James R. Parker, comma, trust manager. 11:08:06
11 Q. Not James Parker individually?
12 A. Right. I mean, it says -- yeah, it says what it says.
13 Q. And from your experience handling these transactions where
14 parents set up properties and trusts for children, it's not at
15 all unusual for the parents to dominate the proceedings for 11:08:24
16 their minor children?
17 MR. PERKEL: Object.
18 THE COURT: Sustained.
19 BY MR. MINNS:
20 Q. The name of the seller, if I haven't messed that up, who 11:08:36
21 is the seller on this document?
22 A. It's listed as Robert W. Dietrich, Jr., as successor,
23 trustee.
24 Q. First, that means that Robert, however we pronounce it, is
25 not personally on this; correct? He's signing this as trustee. 11:09:04

United States District Court

JOHN LOTARDO - Cross

1 A. Yeah. I mean, I'm sure that the title is a little bit 11:09:12
2 longer but due to computer limitations, it gives us the idea
3 that he's acting as the trustee of the trust.

4 Q. And it also tells us that he wasn't the first. There was
5 someone that was a trustee before him? 11:09:28

6 A. Yeah. Typically, when they say successor trustee, it
7 gives the impression that there was someone before him.

8 Q. And that's not at all uncommon either because a lot of
9 these trusts are set up to avoid probate; correct?

10 MR. PERKEL: Objection, Your Honor. Asking for 11:09:46
11 opinion.

12 THE COURT: Sustained.

13 Let me see counsel at the sidebar.

14 (At sidebar.)

15 THE COURT: Mr. Minns, I don't wanted to embarrass 11:10:07
16 you in front of your client and in front of the jury, but you
17 are making efforts to make an expert witness out of this man,
18 this witness, and I am not going to allow it. If you ask him
19 questions about the documents without asking him for an
20 opinion, I will allow it. But anything that goes beyond that, 11:10:27
21 and it's obvious to me that you are trying to use this witness
22 as an expert to establish your defense in this case, I am not
23 going to allow it.

24 MR. MINNS: May I please respond, Your Honor.

25 THE COURT: You may. 11:10:48

JOHN LOTARDO - Cross

1 MR. MINNS: The government did not identify him as an 11:10:49
2 expert but his entire testimony was expert testimony and it was
3 very well done and he is an expert. He was put on by the
4 government to explain these complicated real estate matters and
5 chain of title in the way that they wished it to be done. And 11:11:02
6 he has testified to all of these documents. He has enlightened
7 the jurors on the usage of these documents, how they work and
8 custom and standard practice.

9 And now my ability to do equal and cross-examine is
10 being cut off at my knees and I should have been given a CV in 11:11:24
11 advance, they should have put him on their expert witness list.
12 I think less than 10 percent of his testimony was pure factual
13 in nature. He has no personal knowledge of any of the facts in
14 this case.

15 I'll stand by the Court's order. I always obey the 11:11:43
16 Court's orders, but I feel I must make a record and I feel that
17 this is error allowing the government to use him as an expert
18 and not allowing me to cross-examine him.

19 MR. PERKEL: Well, the government didn't use him as
20 an expert, Your Honor. He read from the documents. He 11:12:00
21 explained the relationship from one document to the next.
22 There was no opinion as to whether it was proper to set up a
23 trust or not proper to set up a trust. It was managing the
24 trust or who was the person behind the trust. We didn't ask
25 him any questions about his opinion about whether this reflects 11:12:15

United States District Court

JOHN LOTARDO - Cross

1 a nominee or an alter ego of anybody. We really asked him to 11:12:18
2 read from the documents, explain the basics of the documents to
3 the jury. It is complicated and that's what he did. There has
4 been no expert testimony.

5 THE COURT: And that is correct. If he had given 11:12:31
6 expert testimony, and I precluded that from the beginning, and
7 you had popped up and you had made an appropriate objection, I
8 would have sustained it.

9 Retrospectively, as I think about the questions that
10 were asked, the answers that were given, I agree with 11:12:49
11 Mr. Perkel. He has not been an expert witness. He has been a
12 witness only with respect to the documents and his experience
13 in connection with those documents.

14 It was almost as if we didn't need him to do that.
15 And I am sure with your experience, you would say the same. 11:13:08
16 But most of the jurors, if not all of them, know what a deed of
17 trust is, what documentation in connection with deeds of trusts
18 are and what recording of those documents are, and that is
19 essentially what we heard.

20 So don't ask him expert witness testimony about 11:13:31
21 trusts, about parents placing documentation or placing property
22 in trusts and suggesting answers to him because I will sustain
23 those objections as they are made. I will instruct the jury,
24 and you will raise the ire of this court in front of your
25 counsel and the jury. 11:14:03

United States District Court

JOHN LOTARDO - Cross

1 We're finished. 11:14:04
2 MR. MINNS: Thank you, Your Honor.
3 (End sidebar.)
4 MR. MINNS: Under the circumstances, Your Honor, I am
5 nearly finished. 11:15:49
6 THE COURT: All right.
7 MR. MINNS: May I have the Court's permission to
8 display Exhibit 547?
9 THE COURT: Yes.
10 MR. MINNS: May I have the Court's permission to ask 11:16:07
11 the witness to read the highlighted portion on Exhibit 547?
12 THE COURT: Yes.
13 BY MR. MINNS:
14 Q. Would you read the highlighted portion?
15 A. Yes. It says, "Prepayment penalty," and then the amount 11:16:17
16 next to it is \$21,300.
17 MR. MINNS: Your Honor, may I ask -- and it would be
18 my last question -- if that is a very large prepayment penalty?
19 MR. PERKEL: I have no objection.
20 THE COURT: I don't know if you're going to have an 11:16:49
21 objection to that.
22 MR. PERKEL: No objection.
23 THE COURT: No objection. Okay. He can answer that
24 if he can.
25

United States District Court

WALTER CAVE - Direct

1 BY MR. MINNS: 11:16:55

2 Q. That's a pretty big prepayment penalty, isn't it?

3 A. In and of itself it is, but I've seen a lot larger.

4 You've got to consider the amount of the case, the amount of

5 borrowed. 11:17:07

6 MR. MINNS: Pleasure meeting you, sir.

7 THE WITNESS: Thank you.

8 THE COURT: Redirect if you have any?

9 MR. PERKEL: No, Your Honor.

10 THE COURT: You may step down. 11:17:15

11 And you're next witness?

12 (Witness excused.)

13 (End of excerpted portion.)

14 MR. PERKEL: Thank you, Your Honor. The government

15 calls Walter Cave. 11:17:19

16 WALTER CAVE,

17 called as a witness herein by the government, having been first

18 duly sworn or affirmed to testify to the truth, was examined

19 and testified as follows:

20 COURTROOM DEPUTY: State your name for the record, 11:17:58

21 spell your last name, please.

22 THE WITNESS: My name is Walter Cave. C-A-V-E.

23 **DIRECT EXAMINATION**

24 BY MR. PERKEL:

25 Q. Mr. Cave, good morning. And could you introduce yourself 11:18:32

United States District Court

WALTER CAVE - Direct

1	to the jury?	11:18:35
2	A. Yes. My name is Walter Cave.	
3	Q. And, Mr. Cave, without telling us your specific address,	
4	where do you currently live?	
5	A. In the north end of Phoenix.	11:18:52
6	Q. And where are you from, Mr. Cave?	
7	A. Originally, from the Chicago area.	
8	Q. And how long have you lived -- I'm sorry.	
9	A. I have been in Phoenix about 60 years.	
10	Q. And do you currently work or invest with a group?	11:19:10
11	A. That's right.	
12	Q. And can you tell us the name of that group that you are	
13	working with or investing with?	
14	A. Yes. Universal Properties.	
15	Q. And what is Universal Properties?	11:19:27
16	A. It's a partnership composed of Charles DeMore and I. We	
17	invest in various situations.	
18	Q. And when you say various situations, can you tell us a	
19	little bit more about those investments involving real estate	
20	or can you tell us a little bit more about that?	11:19:55
21	A. Well, currently we're involved in a 300-acre subdivision	
22	in Show Low and we have a couple of trailer parks also and we	
23	have some other ventures that aren't doing all that well	
24	either.	
25	Q. Is it fair to say that your investments involve real	11:20:23

United States District Court

WALTER CAVE - Direct

1 estate? 11:20:27

2 A. That's right.

3 Q. You mentioned Charles DeMore as your partner?

4 A. That's right.

5 Q. Is he the only partner, just you two? 11:20:35

6 A. Yes.

7 Q. And do you have any employees that work for you?

8 A. No.

9 Q. Someone by the name of Bill Graves, is he an outside

10 contractor or does he work for you? 11:20:47

11 A. He is a consultant and he works with us from time to time.

12 Q. And how long has Mr. Graves worked for you?

13 A. Well, he's worked with us for, probably, 20 years,

14 thereabouts.

15 Q. Worked with you, not for you; correct? 11:21:08

16 Let me ask you about Mr. DeMore. How did you meet

17 your partner, Mr. DeMore?

18 A. During the 1940s, we were working in the drywall industry

19 and we became friends thereafter, and subsequently went into

20 the Air Force and we both got discharged about the same time 11:21:36

21 and we went into business together in 1952 and we have been

22 business partners since.

23 Q. And has Universal Properties always been in the same

24 business of real estate investments?

25 A. No. We have been involved in quite a few things. 11:21:57

United States District Court

WALTER CAVE - Direct

1 Q. What other types of things? 11:22:00

2 A. We were involved in aircraft, farming, several different
3 businesses.

4 Q. In front of you are a number of exhibits. The first
5 exhibit -- when I mean exhibit, I just mean in a folder. And 11:22:27
6 the first one is a large -- it looks like a large red folder.
7 That should be Exhibit 204. Can you look at that exhibit?

8 A. All right.

9 Q. And if you could turn to the second page of the exhibit.
10 Did you sign that declaration of regularly conducted business 11:22:58
11 activity?

12 A. Yes, I did.

13 MR. PERKEL: Your Honor, at this time I offer
14 Exhibit 204 as a 902(11) certified record.

15 MR. MINNS: I have no objection. 11:23:11

16 THE COURT: There's no objection.

17 MR. PERKEL: At the same time, for the sake of
18 expediency, I do offer the following sub-exhibits: 137 through
19 138, 204 through 205, 384, and 563 through 569.

20 MR. MINNS: No objection. 11:23:22

21 THE COURT: They are admitted as sub-exhibits of the
22 previous exhibit; correct?

23 (Exhibit Numbers 137, 138, 204, 205, 384, 563-569
24 were admitted into evidence.)

25 MR. PERKEL: Correct, Your Honor. 11:23:33

United States District Court

WALTER CAVE - Direct

1 For the record, let me repeat them. 137 through 138, 11:23:37
2 204 through 205, 384 and 563 through 569.

3 All right. Thank you, sir.

4 BY MR. PERKEL:

5 Q. You can put the exhibit down now. We'll get back to it in 11:23:52
6 a second.

7 Did there come a point in time or were there
8 occasions when Universal Properties loaned money to Sunlight
9 Financial through James Parker?

10 A. In 2003 we got word from a mortgage lender that this large 11:24:11
11 house in the Carefree area was available for a mortgage. I
12 think as I recall it was a friend of Mr. Graves that worked for
13 this mortgage company that told Mr. Graves about it and he, in
14 turn, told us.

15 Q. You mentioned 2003. Would you consider that the first 11:25:16
16 loan or investment with regards to Sunlight Financial and
17 Mr. Parker?

18 A. Yes. That's right.

19 Q. And then was there a second loan or second investment?

20 A. Yes, in 2005. 11:25:31

21 Q. Does Universal function like a Wells Fargo or a Wachovia
22 Bank?

23 A. Hardly. No.

24 Q. So can you tell us what is the difference in terms of the
25 loans that you provide versus the banks that are on the 11:25:49

WALTER CAVE - Direct

1 streets? 11:25:52

2 A. We happen to have some cash available. As I recall, we

3 had sold a farm and we thought this would probably be a good

4 investment. We have done similar investments from time to time

5 but not all that often. 11:26:11

6 Q. And for both of the houses, how were the loans secured?

7 A. By the house on Meander Way.

8 Q. Is that the 35802 address?

9 A. That's right.

10 Q. And did you use a title company to help facilitate the 11:26:36

11 process of these loans?

12 A. Yes. We did.

13 Q. Do you recall which one?

14 A. Stewart Title.

15 Q. Why did you use them? 11:26:44

16 A. We used them in the past and were happy with the

17 arrangement and we felt that they would provide a service for

18 us that we didn't care to do as far as the collections and so

19 forth.

20 Q. So you didn't want to be involved with the collection of 11:27:04

21 the payments on the loan?

22 A. No.

23 Q. Let's start with the first loan and I would like to direct

24 your attention to Government's Exhibit 174, page two. And

25 we're going to bring it up on the screen and it will make it 11:27:28

United States District Court

WALTER CAVE - Direct

1 easier so you don't have to shuffle through the papers. It's 11:27:30
2 already in evidence and let's just do the top half. Let me
3 know if you have a problem reading that. The top says
4 "Promissory Note." Is this the promissory note reflected for
5 the first loan of \$355,000? 11:27:43

6 A. That's correct.

7 Q. And this is the loan that took place on July of 2003?

8 A. That's right.

9 Q. So can you read the fourth line from the top where it says
10 "principal sum," can you just read to the jury the remaining 11:28:05
11 portion of the paragraph, please.

12 A. ". . . principal sum of Three Hundred Fifty-five Thousand
13 and 00/100 Dollars (\$355,000.00) with interest from the date
14 hereof until paid at the rate of eight and three-quarters
15 percent (8-3/4%) per annum on the unpaid principal balance to 11:28:23
16 be paid quarterly."

17 MR. SEXTON: Walter, when he's reading, he probably
18 should pull the microphone closer to him. It was a little bit
19 hard to hear that.

20 MR. PERKEL: Okay. Thank you. 11:28:36

21 BY MR. PERKEL:

22 Q. Sometimes the acoustics in here aren't so great. So when
23 you read and speak, if you could speak into the microphone to
24 the best of your ability.

25 And then is that the interest rate on the loan, the 11:28:47

United States District Court

WALTER CAVE - Direct

1 8-3/4 percent? 11:28:50

2 A. That's right.

3 Q. Let's start with the second paragraph. Can you tell me

4 what it says about how the note should be paid back?

5 A. Do you want me to read it to you? 11:29:03

6 Q. Sure.

7 A. "This Note shall be payable quarterly at a rate of Seven

8 Thousand Eight Hundred Twenty-two and 39/100 Dollars

9 (\$7,822.39), the first to be paid on November 1, 2003.

10 Interest shall be compounded monthly." 11:29:17

11 Q. Let me stop you there. What does that mean, interest

12 shall be compounded monthly?

13 A. The interest for the year is 8-3/4 percent. It would be

14 1/12 of that for one month and that interest would then be

15 added to the principal and the next month, the interest would 11:29:43

16 be on the principal and interest.

17 Q. Okay. Going on to the next line, it gives the list of

18 dates, the payments or due dates, and I want to go past that

19 line and go to the sentence that starts, "The Maker shall have

20 the" -- we'll highlight that sentence. "The Maker shall have 11:30:07

21 the right to prepay this Promissory Note..." What does that

22 mean? What was that -- why was that included in the contract

23 or the promissory note?

24 A. That was a prepayment penalty.

25 Q. What is a prepayment penalty. 11:30:26

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WALTER CAVE - Direct

1 A. In the event borrower would decide to pay the loan off 11:30:31
2 prior to the payoff date, we would be entitled to a
3 reimbursement or a penalty for that.

4 Q. All right. Let's go to the full page of the document.
5 Let's go to page four of the document. Page three, I'm sorry. 11:31:06
6 It looks like the document is signed, the promissory is signed
7 by Universal Properties holder. Is that Charles DeMore. Is
8 that the partner that you refer to?

9 A. That's right.

10 Q. And it's signed by Rachel Harris for Sunlight Financial? 11:31:40
11 A. Rachel Harris.

12 Q. Do you remember ever meeting Rachel Harris during the
13 process of negotiating this loan or being involved with this
14 loan?

15 A. Yes. Yes, I do. 11:31:58

16 Q. Do you recall how many times you may have met her?
17 A. I don't really -- it would be once or twice, maybe three
18 times.

19 Q. And did you meet her at the signing or the closing of the
20 finance? 11:32:17
21 A. Yes. I think that was once or twice.

22 Q. And when I say closing, I mean that's when all of the
23 documents are being signed.

24 A. Right.

25 Q. Let's move on to the August 15 loan. Is that the second 11:32:36

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WALTER CAVE - Direct

1 loan that you were going to talk about earlier? 11:32:40
2 A. That's right.
3 Q. It's not on the screen or anything yet but let me ask you,
4 do you remember what amount of money Universal Properties
5 loaned in the second loan? 11:32:49
6 A. Yes. It was one-and-a-half million dollars.
7 Q. And what happened to the original \$355,000 loan?
8 A. That was incorporated into the one-and-a-half million.
9 Q. And between 2003 and 2005, so between the first loan for
10 355,000 and the second loan, did the borrower make all of the 11:33:12
11 interest only payments on the loan?
12 A. Yes, he did.
13 Q. Let's go to Exhibit 137 and we've put it on screen as well
14 and let's just go to the -- just the first paragraph. This is
15 the second promissory note. Is this the promissory note for 11:33:41
16 the \$1.5 million loan?
17 A. Yes, it is.
18 Q. And let's go to the -- let's go to the second paragraph.
19 Can you read us that paragraph, please, sir?
20 A. "This Note shall bear interest at the prime rate, as 11:34:09
21 published by the "Wall Street Journal", plus two and
22 three-quarters percent (2-3/4%) per annum. Interest will be
23 paid quarterly and compounded monthly. Regardless of the prime
24 rate, the interest due hereunder shall never be less than nine
25 percent (9%) per annum, and (a) during the first thirty-six 11:34:25

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1 (36) months of this Note shall not exceed ten percent (10%) per 11:34:30
2 annum (except in the event of default, wherein the rate shall
3 be twenty-four percent (24%) per annum); and, (b) during the
4 thirty-seventh (37th) month through sixtieth (60th) months of
5 this Note, shall not exceed twelve percent (12%) per annum 11:34:50
6 (except in the event of default, wherein the rate shall be
7 twenty-four percent (24%) per annum)."

8 Q. Let me just stop you there. And I just want to focus on
9 that nine percent where it says regardless of the prime rate.
10 The interest rate due hereunder shall never be less than nine 11:35:08
11 percent, is that sort of the bottom -- is that sort of the
12 bottom cap of where the interest rate would be on the loan?

13 A. Yes.

14 Q. So even if the "Wall Street Journal" rate plus the two and
15 three-quarters fell below that, the nine percent -- 11:35:22

16 MR. MINNS: Excuse me, Your Honor.

17 THE COURT: He hasn't finished his question but I
18 presume you're going to say leading and I'm going to sustain
19 it.

20 Mr. Perkel, avoid the leading questions. 11:35:40

21 MR. PERKEL: I will. Thank you, Your Honor.

22 Let me rephrase the question.

23 BY MR. PERKEL:

24 Q. If the rate from the "Wall Street Journal" plus the two
25 and three-quarters was less than the nine percent, what is the 11:35:49

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WALTER CAVE - Direct

1 promissory note, what does the promissory note require? 11:35:53
2 MR. MINNS: Pardon me, Your Honor. My other
3 objection is that this is not relevant to anything in this
4 case.
5 MR. PERKEL: Would you like me to respond now? 11:36:04
6 THE COURT: Yes.
7 MR. PERKEL: Your Honor, it is relevant. The
8 defendant entered into an interest rate -- an interest only
9 loan at nine percent, well above the "Wall Street Journal" rate
10 with a minimum nine percent cap. 11:36:14
11 THE COURT: Okay. Overruled.
12 MR. MINNS: May I ask the relevancy, Your Honor?
13 THE COURT: No, not at this time.
14 BY MR. PERKEL:
15 Q. Let's go back to -- I'm sorry, if we can go back to that 11:36:34
16 paragraph. Where it says "Regardless." Can you just read that
17 sentence? It says, "Regardless of the prime rate, the amount
18 interest due hereunder shall never decrease."
19 A. That's right.
20 Q. Can you reader what's said after that decrease? 11:36:57
21 A. "In other words, the interest rate of this Note can adjust
22 upwards, subject to the caps identified herein, but can never
23 adjust downward. Holder shall present an invoice for each
24 quarterly payment due at least ten (10) days before the
25 scheduled payment." 11:37:16

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WALTER CAVE - Direct

1 Q. Sir, as an investor with the partnership of Universal 11:37:17
2 Properties, would you say that at the time of 2005 was this a
3 favorable investment for Universal?

4 MR. MINNS: And, Your Honor, this is totally leading.

5 THE COURT: Totally what? 11:37:35

6 MR. MINNS: Leading. He's already answered the
7 question.

8 THE COURT: Well, I am going to sustain that
9 objection.

10 MR. PERKEL: I'll just ask it this way. 11:37:42

11 BY MR. PERKEL:

12 Q. Was this a favorable investment?

13 A. We felt it was.

14 Q. Okay. And at the nine percent rate, as sort of the
15 bottom, just give me an approximation. On a \$1.5 million loan, 11:37:51
16 what is sort of the average interest payment yearly?

17 A. Somewhere close to 10 percent I would think.

18 Q. So if you take 10 percent of 1.5 that's how you get an
19 approximate average?

20 A. On \$150,000. 11:38:09

21 Q. Let's go to the next paragraph, just the third paragraph.

22 Just in the first line, it says, "Maker shall pay
23 interest-only payments." What does that mean?

24 A. There's no principal due at this time, just the interest
25 there on. 11:38:39

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WALTER CAVE - Direct

1 Q. Okay. Let's now back up and go to the fourth paragraph on 11:38:41
2 the page. Without reading the entire paragraph, does this
3 paragraph also have a prepayment penalty for the payment of
4 principal before the loan?

5 A. Yes, it does. 11:38:58

6 Q. What was the term of the 2005 loan?

7 A. As I recall, it was five years.

8 Q. If we could back up from that screen, please. Let's go to
9 the third paragraph again and just the last line.

10 A. "The full amount due pursuant to this Note shall be paid 11:39:42
11 on or before August 13, 2010."

12 Q. So it's a five-year loan?

13 A. Right.

14 Q. During the time that there was -- during the negotiation
15 process of the 2005 loan, did there come a point in time that 11:40:10
16 the issue of subordination came up of another loan?

17 A. Yes.

18 Q. Can you tell us about that?

19 A. As I recall, there was a note from an Omega Construction
20 and it was for I think \$290,000 and we felt that was in the 11:40:35
21 first position and we wanted a subordination agreement to where
22 we would be in first rather than something less than that.

23 Q. And let me show you Government Exhibit 166, page two.
24 Just if you can highlight the top third. So the date at the
25 top of February 13, 2004. Is this the loan that you were 11:41:15

WALTER CAVE - Direct

1 referring to between Sunlight and Omega Construction? 11:41:23

2 A. That's right.

3 Q. And if we could just go to the middle portion of the

4 entire page. And that's the \$296,000 that you just discussed,

5 approximately? 11:41:44

6 A. That's right.

7 Q. So between the first loan from Universal to the second

8 loan, there was a notice in the public, Maricopa County, of

9 this additional loan?

10 A. Yes. 11:41:59

11 Q. And so you needed a subordination agreement?

12 A. Right.

13 Q. Let me show you the subordination agreement. It's

14 Exhibit 564.

15 Does this look like -- is this the subordination 11:42:15

16 agreement that was signed?

17 A. Yes, it is.

18 Q. And do you see where it says Sunlight Financial?

19 A. I do.

20 Q. And that is the purported borrower of this \$296,000 loan 11:42:27

21 and can you scroll to the bottom of the screen, that same

22 screen is fine, and do you see where it says 296 dated February

23 10, 2004?

24 A. That's right.

25 Q. And that's the purported lender of that loan? 11:42:49

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1 A. Yes, it is. 11:42:51

2 Q. Okay. Now let's just go to the bottom of the whole page.

3 Are those the initials of the parties that agreed to

4 subordinate their loan?

5 A. I believe so. 11:43:06

6 Q. I want to turn to page five of the same exhibit and I just

7 want to focus on the top signature and is that signature of the

8 president of Omega Construction?

9 A. That's what it represents, yes.

10 Q. Okay. Do you know that signature? Is that Mr. James 11:43:43

11 Parker's signature?

12 A. I don't recognize it one way or the other.

13 Q. Let's go to the very next page and that is page six of the

14 exhibit. And, again, just the top portion.

15 Is that the subordination signing of the Sunlight 11:44:05

16 Financial person?

17 A. Yes. I believe so.

18 Q. And then finally going on to the next page, page seven, is

19 that the signature at the top of your partner again?

20 A. That's right. 11:44:24

21 Q. Now, had you not -- had Universal not obtained the

22 subordination agreement, would you have gone ahead with the

23 \$1.5 million loan?

24 A. Probably not.

25 Q. And how come? 11:44:47

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WALTER CAVE - Direct

- 1 A. That would have affected our position if the -- if that 11:44:49
2 Omega loan was in front of us, if there had been any problems,
3 we would have been the last one to be paid.
- 4 Q. Let's move on from the subordination issue and move on to
5 something else. About the time of the second 1.5 million loan 11:45:18
6 was there an issue involving the bankruptcy of Rachel Harris?
- 7 A. Yes. That came up.
- 8 Q. And to the best of your recollection, I know it was a long
9 time ago, can you tell us what you remember about that issue?
- 10 A. I think it was our attorney that brought it to our 11:45:34
11 attention.
- 12 Q. And was that of concern initially?
- 13 A. Yes, it was.
- 14 Q. How come?
- 15 A. There was some speculation that she was in bankruptcy, if 11:45:47
16 all of this could be consummated.
- 17 Q. And was there a -- was there an issue of -- in addition to
18 the bankruptcy issue, initially was the discussion of a loan at
19 \$1.75 million?
- 20 A. Yes. Initially I think that's what it was. 11:46:17
- 21 Q. And then it was reduced to \$1.5 million?
- 22 A. That's right.
- 23 Q. And how come?
- 24 A. As I recall, there was another friend of ours that wanted
25 \$250,000 to invest in the loan. And subsequently he changed 11:46:31

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WALTER CAVE - Direct

1 his mind and I think that's when we went back to the 11:46:45
2 one-and-a-half million.

3 Q. And was there an issue during the negotiation about the
4 furniture involved in the house or the personal property?

5 A. I think Mr. DeMore and Mr. Parker had discussed it. 11:47:08

6 Q. Okay. I'll ask him. Does the \$1.5 million, going to
7 August of 2005 --

8 MR. MINNS: Your Honor, I have to make an objection
9 at sidebar.

10 THE COURT: On what basis? 11:47:22

11 MR. MINNS: Constitution of the United States, Fifth
12 Amendment, improper comment by the government.

13 THE COURT: Is that relating to any of the questions
14 from this point forward or is it just a motion that you wish to
15 make? 11:47:40

16 MR. MINNS: It's -- I don't know if he's going to
17 continue to violate it or not.

18 THE COURT: Well, ladies and gentlemen, I haven't
19 made that determination. It's an argument of counsel. We'll
20 talk about it at the sidebar. 11:47:51

21 (At sidebar.)

22 MR. MINNS: May I proceed, Your Honor?

23 He just said he would talk to Mr. Parker about it.

24 "We'll talk to Mr. Parker. We'll ask Mr. Parker."

25 THE COURT: No. No. He said -- I think he' s 11:48:17

WALTER CAVE - Direct

1 talking about Mr. DeMore. 11:48:19

2 MR. PERKEL: Yes, he's our next witness.

3 MR. MINNS: I misunderstood him. I thought he said
4 that he would talk to Mr. Parker.

5 THE COURT: No. He said he'll talk to him and so I 11:48:27
6 took that to be Mr. DeMore. But I'll make that clear to the
7 jury.

8 (End sidebar.)

9 THE COURT: All right. Ladies and gentlemen, just so
10 it's clear to you, when Mr. Perkel said he will talk to him 11:48:43
11 about it, he meant -- who?

12 MR. PERKEL: Mr. DeMore, Your Honor.

13 THE COURT: Mr. DeMore. As I told you in the
14 beginning that there is no obligation, never will be an
15 obligation for a defendant to testify, nor to talk to the 11:49:02
16 United States government. So that's who Mr. Perkel meant.
17 That's because he's a witness.

18 MR. PERKEL: He's the next witness, Your Honor. I
19 apologize I just casually said it.

20 THE COURT: The next witness is Mr. DeMore and that's 11:49:26
21 what was meant by what was.

22 All right. You may proceed.

23 MR. PERKEL: Thank you.

24 BY MR. PERKEL:

25 Q. Turning to the \$1.5 million loan, based on your experience 11:49:33

WALTER CAVE - Direct

1 in real estate investments, turning -- and obviously turning to 11:49:40
2 August of 2005, did that represent the full value of the house
3 per Universal's opinion or evaluation of the deal?

4 A. No. We felt it was worth several times that.

5 Q. Would you -- and based on your experience, would you make 11:50:01
6 a loan of this type up to the value of the house?

7 A. No.

8 Q. How come?

9 A. Well, in the event of time such as we're having right now,
10 we might lose the value of a house by several times in just a 11:50:20
11 short time. In a situation like that, we could be in a
12 position where we would be upside down, like considerably other
13 people are in the mortgage business right now.

14 Q. And let me ask you -- let's turn to Exhibit 384. Page
15 three. 11:50:57

16 All right. Just the top. That's fine.

17 THE COURT: We're going to stop here for our lunch
18 break.

19 Ladies and gentlemen, we'll see you back here at 1
20 o'clock. 11:51:11

21 And we're in recess. Thank you.

22 COURTROOM DEPUTY: All rise.

23 (Jury departs.)

24 (Recess at 11:51; resumed at 1:06.)

25 (Jury enters.) 01:06:41

United States District Court

WALTER CAVE - Direct

1 (Court was called to order by the courtroom deputy.) 01:06:43
2 THE COURT: Please be seated.
3 All right. Mr. Perkel, we're ready to proceed.
4 MR. PERKEL: Thank you.
5 BY MR. PERKEL: 01:06:50
6 Q. Mr. Cave, before we took our lunch break, we were on
7 Exhibit 384 and it's on the screen in front of you. Do you
8 recognize Exhibit 384?
9 A. Yes, I do.
10 Q. What is it? 01:07:04
11 A. It's the extension of the third agreement -- excuse me, an
12 extension of the second agreement.
13 Q. And the second agreement, you're referring to --
14 A. Between the Sunset Financial and Universal Properties.
15 Q. What's the date on the agreement in front of you? 01:07:30
16 A. Excuse me?
17 Q. What's the date on the first amendment?
18 A. August 23, 2010.
19 Q. And is this essentially an extension of the August 2005
20 loan? 01:07:46
21 A. Yes, it is.
22 Q. And does that reference, in the first paragraph of this,
23 amended extension?
24 A. Yes, it is.
25 Q. Is essentially this extending the loan for another period 01:08:03

United States District Court

WALTER CAVE - Direct

1 of time? 01:08:09

2 A. Yes. Three years.

3 Q. And is it essentially the same terms as the original \$1.5
4 million loan?

5 A. Yes. It hasn't changed. 01:08:15

6 Q. And, again, this is a document that is kept in your normal
7 course of business; correct?

8 A. Right.

9 Q. Let's go to -- let me ask you this question. Between the
10 2005 loan, the original \$1.5 million, and until August 23 of 01:08:32
11 2010 when the loan was essentially extended again, were all
12 payments made?

13 A. Yes, they were.

14 Q. And how come, in August of 2010, Universal decided to go
15 ahead and extend the same loan? 01:08:56

16 A. We liked the terms and conditions and Parker was agreeable
17 also.

18 After consulting with him and his daughter, he told
19 us that he was willing to extend it.

20 Q. Was it a financially profitable loan? 01:09:17

21 A. Yes. Also.

22 Q. And to be clear, the August 2010 loan, the extension of
23 the original loan, is that another \$1.5 million -- is it an
24 additional cash that is given to Sunlight or Mr. Parker or is
25 this an extension of the first? 01:09:38

United States District Court

WALTER CAVE - Direct

1 A. It's an extension of the first. 01:09:40
2 Q. Okay. No new cash?
3 A. No.
4 Q. Let me show you, and I just want to make sure it's in
5 evidence, but I want to show you government Exhibit 422. Is 01:10:06
6 that in evidence?
7 COURTROOM DEPUTY: It is.
8 MR. PERKEL: Okay.
9 BY MR. PERKEL:
10 Q. Let me show that you. It's on the screen in front of you. 01:10:21
11 For both the 2003 and 2005 loans, did you have a chance to
12 personally visit the Meander Way residence?
13 A. Yes, I did.
14 Q. And why do you go to the Meander Way residence or why did
15 you go? 01:10:36
16 A. If we were going to loan money on it, we felt it was a
17 good idea to take a look and see what the building looked like
18 and satisfy ourselves that it was a good investment.
19 Q. And who did you go with when you went to visit the
20 residence? 01:10:56
21 A. Mr. DeMore and I.
22 Q. And can you tell us what happened when you got to the
23 residence? Did you have a chance to go inside?
24 A. Yes, we did.
25 Q. Can you tell us what happened when you got there? 01:11:07

United States District Court

WALTER CAVE - Direct

1 A. Mr. Parker met us and he conducted a grand tour of the 01:11:15
2 entire premises and, needless to say, we were very impressed.
3 Q. And when you say Mr. Parker, Mr. Parker gave you a grand
4 tour, can you tell us what do you mean? Where did he take you?
5 A. We went through all of the rooms to the best of my 01:11:39
6 knowledge.
7 Q. Can't you tell us your observations of the house on the
8 inside?
9 A. The house was about 6,000 to 7,000 square feet. It was
10 Italian architecture and there was a lot of arches and columns, 01:12:03
11 wrought iron, travertine floors, vaulted ceilings and the
12 ceilings were painted, as I recall. They remind me of the
13 Sistine Chapel.
14 Q. And did you -- during this tour, did the house appear to
15 be furnished? 01:12:35
16 A. Yes, it was.
17 Q. And do you recall how many bedrooms you may have seen
18 inside the home?
19 A. No, I don't.
20 Q. Do you remember whether there was a pool at the house? 01:12:47
21 A. Yes. There was.
22 Q. And when you visited the home in 2003 and 2005, do you
23 recall, in addition to Mr. Parker, was his daughter, Rachel
24 Harris, at the house?
25 A. I can't remember. She might well have been. 01:13:05

WALTER CAVE - Direct

1 Q. Was Mr. Parker's attorney at the house? 01:13:11

2 A. Not that I'm aware of.

3 Q. And was an accountant at the house?

4 A. Not that I'm aware of.

5 Q. At some point in August of 2005, after visiting the home, 01:13:22

6 did there come a point in time that you had lunch with

7 Mr. Parker as part of the negotiation process?

8 A. Yes. We had lunch at a Chinese restaurant as I recall.

9 Q. Let me ask you, who did you go to lunch with other than

10 Mr. and Mrs. Parker? 01:13:47

11 A. Mr. DeMore and I had lunch with -- at the Parkers'.

12 Q. What was the purpose of the lunch?

13 A. I think we were in the final negotiations for the second

14 agreement.

15 Q. And at the lunch were there just the four of you, you, 01:14:11

16 Mr. DeMore and the Parkers?

17 A. Right.

18 Q. Was Mr. Parker's daughter, Rachel, there at the lunch?

19 A. Not at the time.

20 Q. Was his attorney at the lunch? 01:14:22

21 A. No.

22 Q. Was his accountant at the lunch?

23 A. No.

24 Q. At some point when meeting Mr. Parker, did he ever tell

25 you anything about any business or any developments of the 01:14:33

United States District Court

WALTER CAVE - Cross

1 lease? 01:14:35

2 A. He had mentioned that he was involved with I think it was
3 beachfront property in Belize.

4 MR. PERKEL: Your Honor, if I could just have one
5 moment, please? 01:14:49

6 THE COURT: Yes.

7 MR. PERKEL: Okay. I have no further questions.
8 Thank you.

9 THE COURT: Okay.
10 Cross? 01:14:59

11 MR. MINNS: A few, Your Honor.

12 THE COURT: Yes.

13 MR. MINNS: May I proceed?

14 THE COURT: You may.

15 **CROSS - EXAMINATION** 01:15:04

16 BY MR. MINNS:

17 Q. Good afternoon, Mr. Cave. You and I had an opportunity to
18 talk for one or two minutes in the hallway, did we not?

19 A. Right.

20 Q. You know I'm Michael Minns and I represent Jim Parker. 01:15:26

21 MR. MINNS: Your Honor, may I publish the part of
22 government Exhibit 384?

23 THE COURT: Yes.

24 THE WITNESS: Let me say I'm rather hard of hearing
25 and you're going to have to do better than that. 01:15:47

WALTER CAVE - Cross

1 BY MR. MINNS: 01:15:48

2 Q. Thank you, sir. I will. You're not the first person to

3 say that.

4 I'm putting up the last page of the document. First

5 let's look at the first page so we make sure what it is. It's 01:16:05

6 the first amended and restated promissory note secured by deed

7 of trust. I'm looking for the signature line on the last page.

8 I've highlighted it for you. Can you tell the jurors, read the

9 highlighting and tell the jurors who the deal is signed and

10 made with. 01:16:31

11 A. Sunlight Financial, LLP, the maker, and it's signed by

12 Rachel T. Harris, general partner, also known as Rachel T.

13 Parker Harris, in her individual capacity and as trustee of the

14 Parker Irrevocable Trust.

15 Q. And if you're aware, the reason that the name reads Rachel 01:17:00

16 T. Parker Harris is that she was Rachel T. Parker before she

17 got married and her maiden name is Parker. So later she became

18 Rachel Harris. Is that correct?

19 A. That's my understanding.

20 Q. The real estate market dropped quite a bit; correct? 01:17:24

21 A. Yes, it has.

22 Q. It hurt everybody in the real estate business, including

23 people that owned mortgages; correct?

24 A. Yes, it is.

25 Q. The home that you just saw, it was very well-built; 01:17:44

WALTER CAVE - Cross

1 correct? 01:17:46

2 A. Yes, it is.

3 Q. And you understand that it was built from the ground up by

4 Mr. Parker, Jim Parker?

5 A. I don't know who built it actually. 01:17:56

6 Q. Okay. Are you familiar in your businesses community for

7 the reputation for truth and honesty that Jim Parker has?

8 MR. PERKEL: Objection, Your Honor. Foundation.

9 THE COURT: Well, he can answer that yes or no but

10 I'm not sure we'll go beyond that. 01:18:23

11 Do you know?

12 BY MR. MINNS:

13 Q. Would you like me to repeat the question?

14 A. Yes. Would you, please.

15 Q. Yes, sir. 01:18:34

16 In the business community where you work and the

17 mortgage business, are you familiar with Jim Parker's

18 reputation for truth and honesty?

19 A. Only that --

20 THE COURT: That's okay. Yes or no? 01:18:48

21 THE WITNESS: No.

22 BY MR. MINNS:

23 Q. You're not familiar with it?

24 A. No, I'm not.

25 MR. MINNS: I'll pass the witness, Your Honor. 01:18:56

United States District Court

CHARLES DEMORE - Direct

1 MR. PERKEL: No further questions from the 01:18:59
2 government.

3 THE COURT: All right. You may step down.

4 MR. PERKEL: Thank you, Your Honor.

5 (Witness excused.) 01:19:05

6 THE COURT: I'm sorry. Mr. Cave, you may step down.

7 THE WITNESS: Fine.

8 (The following portion was previously separately
9 transcribed and is incorporated herein.)

10 MR. PERKEL: The government calls Mr. DeMore. 01:19:11

11 CHARLES DEMORE,
12 called as a witness herein by the Government, having been first
13 duly sworn or affirmed to testify to the truth, was examined
14 and testified as follows:

15 COURTROOM DEPUTY: State your name for the record, 01:20:00
16 spell your last name, please.

17 THE WITNESS: Huey DeMore, capital D, small E,
18 capital M-O-R-E.

19 COURTROOM DEPUTY: All right. Have a seat right over
20 here, please, sir. 01:20:13

21 **DIRECT EXAMINATION**

22 BY MR. PERKEL:

23 Q. Good afternoon, Mr. DeMore. Could you please introduce
24 yourself to the jury?

25 A. Huey DeMore. 01:20:36

CHARLES DEMORE - Direct

1 Q. And, Mr. DeMore, do you sometimes go by the name Charles 01:20:39
2 DeMore, too?

3 A. Yes.

4 Q. What's your full name?

5 A. Charles Huey DeMore. 01:20:46

6 Q. And, Mr. DeMore, where are you from originally?

7 A. Phoenix.

8 Q. And where did you grow up?

9 A. Grew up in Phoenix.

10 Q. Without telling us where you live, is that where you 01:20:59
11 currently reside now, Phoenix?

12 A. Yes.

13 Q. And what business are you a member of or part of?

14 A. Well, a half a dozen businesses I'm involved with.

15 Q. The company or the partnership called Universal 01:21:19
16 Properties, are you a partner of that as well?

17 A. Yes, I am.

18 Q. And is -- and that is actually a partnership between you
19 and Mr. Cave?

20 A. It is. 01:21:29

21 Q. Can you tell us, how did Universal Properties get started?

22 A. We started it probably maybe 20 years ago, 30 years ago.

23 Q. And what is the business of Universal Properties?

24 A. Well, we've done a lot of things. We used to build
25 houses. We built some buildings. We were in the farming 01:21:58

United States District Court

CHARLES DEMORE - Direct

1 business, the restaurant business, the development business and 01:22:02
2 occasionally we loaned money. I shouldn't say we loaned money.
3 If we happened to have some that we're not using and somebody
4 wants to borrow, and it's a stellar arrangement, then we've
5 gotten involved in several deals that way. But not as a 01:22:33
6 business.
7 Q. Did, at some point, Universal Properties also -- I don't
8 know if it's same company but did there come a point in time
9 previously that you were involved in the transport using
10 airline? 01:22:54
11 A. Yes.
12 Q. Are you a pilot, sir?
13 A. I am.
14 Q. And how -- and did you fly for that business, too?
15 A. I did. 01:23:03
16 Q. Do you still do that?
17 A. No. We're not in the airline business any more.
18 Q. I want to turn now to a point in time that Universal
19 Properties loaned money or invested maybe, invested money to
20 Mr. Parker and Sunlight Financial. 01:23:27
21 Do you recall those instances when Universal
22 Properties loaned money or invested?
23 A. Yes.
24 Q. And I wanted to direct your attention to the 2005 loan,
25 that's the loan with regards to the \$1.5 million. Did you have 01:23:50

United States District Court

CHARLES DEMORE - Direct

1 conversations with Mr. Parker about the loan? 01:23:55

2 A. Originally I did.

3 Q. And what was the substance of those conversations? What
4 did you talk about?

5 A. Well, we were approached by a company that schedules loans 01:24:09
6 and they told us -- they asked us if we had any money available
7 and at that time we did. And they asked us if we would be
8 interested in loaning money on a house. I said we would but he
9 could get it cheaper from a bank. And they said it belonged to
10 a trust and we would -- they would pay -- they would have to 01:24:34
11 pay a higher.

12 We really weren't in the money-lending business but
13 it had to be a stellar deal and it had to be what we felt no
14 risk because we're not in that business. We're not in this
15 business to be fighting lawsuits and so forth. But anyway, we 01:24:53
16 wanted to know who we could talk to about it and she said we
17 could talk to Mr. Parker, that he represented somebody.

18 Q. Did there come a point in time that you, in fact, spoke to
19 Mr. Parker on the phone?

20 A. Yes. 01:25:17

21 Q. And were these conversations contemporaneous with the
22 loans themselves about the time that the agreements were being
23 negotiated?

24 A. Yes.

25 Q. Did you ever meet Mr. Parker in person? 01:25:27

United States District Court

CHARLES DEMORE - Direct

1 A. I did. 01:25:29

2 Q. I know it's been a while since 2005 but do you see him in
3 the courtroom today?

4 A. I do.

5 Q. Is he the gentleman that is standing up? 01:25:36

6 A. He is.

7 Q. Let me -- let's go on. And during these telephone
8 conversations, were there issues or a couple of sticking
9 points, especially with regards to the 2005 loan?

10 A. I don't know sticking points. Would you clear that up? 01:26:01
11 What do you mean?

12 Q. Well, during the process of negotiating the 2005 loan,
13 were there a number of issues that were raised during the
14 conversation?

15 A. Well, yes, there was one issue. We always wanted to get 01:26:17
16 the people that were borrowing the money to give us a personal
17 guarantee. We thought if we had a personal guarantee, that
18 they would be reluctant to walk away from the loan.

19 And we asked Mr. Parker if he would sign a personal
20 guarantee. 01:26:39

21 Q. And what did he tell you?

22 A. No.

23 Q. I would like to show you Exhibit 563, page two.

24 A. I'm sorry. There is one other thing. We wanted them to
25 give us a mortgage on the furniture as well. 01:27:08

United States District Court

CHARLES DEMORE - Direct

1 Q. And did you talk to Mr. Parker about that? 01:27:15
2 A. I did.
3 Q. And what did he tell you?
4 A. That it wasn't his furniture and he couldn't do that and
5 wouldn't do that. 01:27:24
6 Q. When you had these conversations with Mr. Parker, it was
7 just you talking to Mr. Parker on the phone?
8 A. I'm sorry?
9 Q. When you had these conversations with Mr. Parker, was it
10 just you and him on the phone? 01:27:38
11 A. Most probably. I don't know if Walter Cave was on the
12 line or not. Usually -- I mean, he could have been but I don't
13 recall.
14 Q. And the discussions about both the guarantee of payment,
15 getting a personal guarantee and discussions about the 01:28:01
16 furniture, those were with Mr. Parker?
17 A. Yes.
18 Q. Those discussions weren't with his daughter?
19 A. Well, he said that he was trying to help them or something
20 at that point. He said he didn't own the furniture and he 01:28:17
21 didn't own the property. So he couldn't if he wanted to and he
22 didn't want to, and that they wouldn't and that it wasn't his.
23 I can't remember -- I don't remember about -- later on whether
24 we learned it then or later that his daughter was the one that
25 was the head of the company or he told us that he was helping 01:28:51

United States District Court

CHARLES DEMORE - Direct

1 her, that he would have to talk to her. I don't remember but 01:28:54
2 she was interjected into it at one point or another.

3 Q. Let me show you Exhibit 563, page two. If you see it on
4 the screen in front of you, is this the unconditional guarantee
5 of payment? 01:29:20

6 A. Yes.

7 Q. And is this what you asked Mr. James Parker and Jacqueline
8 Parker to sign?

9 A. Right. Correct.

10 Q. Did there come a point in time during this process that 01:29:31
11 you learned that his daughter, Rachel Harris, was in
12 bankruptcy?

13 A. Yes.

14 Q. And was that of concern to Universal?

15 A. It was. 01:29:46

16 Q. And how come?

17 A. Well, we didn't understand the intricacies of a trust and
18 we were concerned -- we've heard, you know, a lot of horror
19 stories about trusts and bankruptcies and so forth. So not
20 being in the loan business ourselves, we were, you know, very 01:30:06
21 concerned. And not being experts in that field.

22 Q. During this process of negotiation, did you ever have a
23 chance to have -- meet Mr. Parker for lunch or a meal or dinner
24 at some point?

25 A. Yes. 01:30:33

United States District Court

CHARLES DEMORE - Direct

1 Q. Can you tell the jury about that? 01:30:34

2 A. As I recall, we had lunch at a Chinese restaurant.

3 Q. And who was at the lunch?

4 A. You know, I can't remember. I think that -- I know

5 Mr. Parker was there and I think his wife was there at that 01:30:52

6 time. I can't remember if there were any more parties involved

7 or not. And Walter Cave, my partner, my business partner.

8 Q. And at that lunch, did you discuss the \$1.5 million loan?

9 A. I think that was why we met with him, to, you know --

10 while we were doing our due diligence. 01:31:23

11 Q. And did you have a chance to meet him other than that

12 lunch? Did you have any other meals with him or dinners?

13 A. We went to dinner one night, my wife and I. I can't

14 remember if just I went or my wife and I went to dinner.

15 Q. And who was there? 01:31:55

16 A. I remember Jim Parker being there, but I can't remember if

17 there was anybody else or not.

18 Q. And was this part of the negotiation process of this loan,

19 the \$1.5 million loan?

20 A. Yes. 01:32:17

21 Q. Let me ask you, the loan, the previous loan which was a

22 \$355,000 loan, was there less negotiation for that loan than

23 the \$1.5 million loan?

24 A. Well, the fact that there would have been less concern,

25 you know, I'm sure that we didn't do as much due diligence 01:32:36

United States District Court

CHARLES DEMORE - Direct

- 1 because the house was obviously worth, you know, \$350,000. 01:32:39
- 2 Q. In August of 2005 were you concerned about the \$1.5
3 million loan?
- 4 A. I was. It's a lot of money to us. My son Brian put in
5 \$500,000 and he's a special agent, like you guys are, and he 01:33:06
6 didn't have the money to lose. He just lucked out and sold a
7 house and he was moving to Europe and he happened to sell it at
8 the right time and had that money, bought it at the right time
9 and sold it at the right time and lived in California.
- 10 So he had that and Blackie and I had the money so the 01:33:27
11 three of us decided we would loan it to Jim Parker's group or
12 whoever.
- 13 And we actually had another guy involved, Tom Lowell,
14 but he backed out. So that left three of us. So, yeah, we
15 were concerned, you know. That's a lot of money to us. 01:33:51
- 16 Q. And that's why you asked for that unconditional guarantee
17 of payment?
- 18 A. Right.
- 19 Q. Did you approach anybody else about that guarantee of
20 payment or just Mr. Parker and Mrs. Parker? 01:34:04
- 21 A. I don't know if his daughter was in on any of those
22 conversations. I just don't remember. I mean, you know, it's
23 been, what, ten years ago.
- 24 Q. Okay. And let's turn now -- in 2010 the loan was renewed.
25 Is that fair to say? 01:34:29

United States District Court

CHARLES DEMORE - Cross

1 A. Yes. 01:34:31

2 Q. And why -- was it a new loan, a new cash disbursement, or
3 just the same terms?

4 A. The same terms I think primarily.

5 Q. And why was the -- why was the loan renewed? 01:34:41

6 A. Well, he had been stellar in the way he made his payments,
7 you know, and we could see interest rates were coming down and
8 Brian was going to Brussels to be the new attaché and he was
9 making plans to do it. And so we thought, you know, it was
10 probably a good time if we could extend the note. I think that 01:35:08
11 it was at our request or urging that we extend the note and he
12 agreed to it.

13 MR. PERKEL: Okay. Your Honor, if I could have one
14 moment, please.

15 THE COURT: Yes. 01:35:49

16 MR. PERKEL: Your Honor, I have no further questions.

17 THE COURT: All right, sir.

18 Cross?

19 MR. MINNS: Yes. Thank you, Your Honor.

20 **CROSS - EXAMINATION** 01:35:53

21 BY MR. MINNS:

22 Q. Good afternoon, Mr. DeMore.

23 A. Good afternoon.

24 Q. We got to meet for about 30, 45 seconds out in the hallway
25 when you were waiting? 01:36:11

CHARLES DEMORE - Cross

1 A. Right. 01:36:13

2 Q. I am Michael Minns and I represent Jim.

3 MR. MINNS: First of all, Your Honor, may I have

4 permission to show Government Exhibit 384, the front page and

5 then the last page? 01:36:27

6 THE COURT: Yes.

7 BY MR. MINNS:

8 Q. I'm putting on the screen the front page of the first

9 amended and restated promissory note secured by a deed of trust

10 and then I'm going to turn to the last page. That is the 01:36:40

11 signature page securing the real estate for the loan.

12 Can you tell the jurors who legally you were dealing

13 with, the owner of Sunlight Financial and the home?

14 A. Signed by Rachel T. Harris, general partner.

15 Q. And you testified about the trust. Is it a fact that 01:37:20

16 trusts generally have to pay higher interest rates than

17 individuals?

18 A. That's my understanding because it's difficult -- banks or

19 lending institutions, in general, don't like to loan money to

20 trusts or won't loan money to trusts. 01:37:46

21 Q. So since this was owned by a trust, it created -- and

22 since it had very good collateral, it created an opportunity.

23 A. Yes.

24 Q. Are you familiar with Jim Parker's reputation for truth

25 and honesty? 01:38:06

CHARLES DEMORE - Cross

1 MR. PERKEL: Objection, Your Honor. Foundation. 01:38:08

2 THE COURT: Well, he can answer that yes or no. I'm

3 not sure I will allow anything beyond that.

4 THE WITNESS: Okay. Can I ask you to ask the

5 question again? 01:38:19

6 MR. MINNS: Yes.

7 BY MR. MINNS:

8 Q. Thank you, sir. Are you familiar with Jim Parker's

9 reputation for truth and honesty?

10 A. Well, from the time I knew him -- 01:38:27

11 THE COURT: Well, you just answer that yes or no.

12 Are you familiar with his reputation, yes or no?

13 THE WITNESS: Yes.

14 MR. MINNS: Yes.

15 THE COURT: All right. Counsel, let's talk to the 01:38:39

16 sidebar.

17 (At sidebar.)

18 THE COURT: Okay. Do you have an objection to his

19 giving his opinion on the reputation?

20 MR. PERKEL: I think he needs to lay the foundation 01:39:01

21 as to how he knows and what community he's talking about.

22 THE COURT: Okay. So that's your only objection?

23 Otherwise, you'll allow him to testify to his reputation for

24 truth and honesty?

25 MR. PERKEL: Can I have one moment, Your Honor? 01:39:16

CHARLES DEMORE - Cross

1 THE COURT: Yes. 01:39:17

2 MR. SEXTON: If he lays the foundation and he has
3 dealings in the community and that foundation is laid, we would
4 have no objection.

5 THE COURT: All right. Okay. Because, generally, he 01:39:29
6 hasn't been -- he hasn't testified yet; but if you have no
7 objection, let's have it.

8 (End sidebar.)

9 MR. MINNS: May I proceed, Your Honor?

10 THE COURT: Yes. 01:39:50

11 BY MR. MINNS:

12 Q. And what is his reputation for truth and honesty?

13 THE COURT: Well, we need some foundation first.

14 BY MR. MINNS:

15 Q. In the communities in which you work and in the community 01:39:58
16 in which you have had business dealings with Jim Parker, what
17 is his reputation for truth and honesty?

18 MR. PERKEL: Objection. There's lack of foundation.

19 THE COURT: In his community, he's already given the
20 background so -- 01:40:15

21 MR. PERKEL: He hasn't laid the foundation in the
22 community.

23 THE COURT: Okay. What community -- ask him what
24 community you're talking about since the United States
25 government is not going to have an objection to his testifying 01:40:32

CHARLES DEMORE - Cross

1 to his reputation as long as the community is established. 01:40:37

2 Did I understand that, Counsel?

3 MR. PERKEL: Yes, Your Honor.

4 BY MR. MINNS:

5 Q. In the business community where you and Jim Parker have 01:40:49

6 done business and the same community where you've done business

7 with his daughter, Rachel, and your partner in the community

8 where your partner has done business with him, what is Jim

9 Parker's reputation in that community?

10 MR. PERKEL: Objection again, Your Honor. 01:41:14

11 Foundation.

12 THE COURT: Overruled.

13 THE WITNESS: The loan company that brought this

14 arrangement or deal to us stated that he had loaned -- that

15 they had loaned money to him -- 01:41:32

16 MR. PERKEL: Objection, Your Honor. Hearsay.

17 THE COURT: Well, that is, essentially, the

18 foundation you're looking for. So I'm going to allow him as

19 long as you continue -- you have no objection, then he can set

20 forth what the nature of it is, and I'm going to allow that. 01:41:52

21 Your objection has not been to the answer to the question so

22 overruled.

23 You may continue.

24 THE WITNESS: Okay. Do you want to ask the question

25 again? 01:42:09

United States District Court

CHARLES DEMORE - Cross

1 BY MR. MINNS: 01:42:09

2 Q. Yes, sir. In the community, and this community can
3 include the people that referred him to you in which you and
4 Jim Parker and Rachel Parker and the others do business, what
5 is Jim Parker's reputation for truth and honesty? 01:42:23

6 A. Well, they stated that he had done business with them
7 before and that he had been a stellar client. He paid his
8 bills on time.

9 With that -- we had worked with them before so, you
10 know, that and all of our other due diligence, we went ahead 01:42:51
11 and loaned him the money.

12 Q. Thank you, sir.

13 MR. MINNS: Your Honor, I pass the witness.

14 THE COURT: Thank you.

15 MR. PERKEL: No more questions, Your Honor. 01:43:04

16 THE COURT: You may step down.

17 (Witness excused.)

18 (End of excerpted portion.)

19 THE WITNESS: Okay.

20 MR. PERKEL: The government calls Tom Bowman. 01:43:13

21 THOMAS P. BOWMAN,
22 called as a witness herein by the Government, having been first
23 duly sworn or affirmed to testify to the truth, was examined
24 and testified as follows:

25 COURTROOM DEPUTY: State your name for the record, 01:44:00

THOMAS P. BOWMAN - Direct

1 spell your last name, please. 01:44:01

2 THE WITNESS: Thomas P. Bowman, B-O-W-M-A-N.

3 COURTROOM DEPUTY: Okay. Have a seat right over
4 here, please, sir.

5 THE COURT: You may proceed. 01:44:26

6 MR. PERKEL: Thank you.

7 **DIRECT EXAMINATION**

8 BY MR. PERKEL:

9 Q. Good afternoon, Mr. Bowman. How are you?

10 A. Very good. Thank you. 01:44:32

11 Q. Could you please introduce yourself to the jury?

12 A. Yes. My name is Thomas P. Bowman, Bowman & Associates.

13 Q. Mr. Bowman, I'm going to ask you if you could maybe speak
14 up or speak into the microphone. The acoustics in here.

15 A. Okay. 01:44:45

16 Q. Can you tell us, where are you employed?

17 A. Bowman & Associates Insurance Agency, Phoenix, Arizona.

18 Q. And where is that located?

19 A. 16042 North 32nd Street.

20 Q. And without telling us your specific address, do you live
21 here in Phoenix? 01:44:57

22 A. Yes, I do.

23 Q. How many employees are employed by your insurance company?

24 A. 11.

25 Q. And can you tell us how Bowman & Associates got started? 01:45:11

THOMAS P. BOWMAN - Direct

1 A. My father was transferred here from an agency out of 01:45:14
2 Minneapolis, started up his own from that branch and we
3 incorporated back in '79 and it has been a family owned
4 business since then.

5 Q. And can you tell us what kind of products and services 01:45:36
6 your business sells?

7 A. We are a generalist. We do commercial lines, personal and
8 some benefits.

9 Q. And can you tell us the difference between what you do,
10 Bowman & Associates, what an insurance carrier is? What is the 01:45:52
11 difference?

12 A. We are a placement broker that will merge a customer with
13 the company, the coverages.

14 Q. Did Bowman & Associates serve as the agent that
15 facilitated the sale of insurance for the 35802 North Meander 01:46:17
16 Way residence?

17 A. Yes.

18 Q. And prior to testifying today, have you had a chance to
19 look through records related to that specific property and
20 insurance for that specific property? 01:46:33

21 A. Yes.

22 Q. And in front of you, we should find Exhibits 177 and then
23 a number of sub-exhibits, 179 through 181 and 570 through 581.
24 Just looking at the first exhibit, 177, do you recognize that
25 exhibit? Let's turn to page two of it. 01:46:55

United States District Court

THOMAS P. BOWMAN - Direct

1 MR. MINNS: No objections to any of them. 01:46:58
2 THE COURT: All right. It's admitted.
3 (Exhibit Numbers 177, 179-181, 570-581 were admitted
4 into evidence.)
5 MR. PERKEL: Your Honor, at this time, I also move in 01:47:04
6 the sub-exhibits, 179 through 181 and 570 through 581.
7 MR. MINNS: I thought the Court just admitted them.
8 THE COURT: They are admitted. The sub-exhibits are
9 also admitted.
10 BY MR. PERKEL: 01:47:27
11 Q. I want you to look at Exhibit 573, page two. You have it
12 in the folder in front of you. We're also going to bring it up
13 in front of you on the screen. Can you tell us what this
14 exhibit is?
15 A. This is an evidence of property coverage that we issue out 01:47:56
16 shortly after we bind coverage with the carrier.
17 Q. And what's the date at the top of this?
18 A. 8-11-1999.
19 Q. Can you tell us who the producer of the coverage?
20 A. The producer is Larry Ball. 01:48:15
21 Q. Where it says Bowman & Associates, is that you?
22 A. I'm sorry. That is our agency, Bowman & Associates,
23 correct.
24 Q. And does this document reflect the details of the
25 insurance on the date 8-11-1999? 01:48:30

United States District Court

THOMAS P. BOWMAN - Direct

- 1 A. Yes, it does. 01:48:34
- 2 Q. And let's go through the expiration date of the insurance.
3 When does this -- when does the document reflect this insurance
4 expires?
- 5 A. 8-11-1999 through 8-11-2000. 01:48:44
- 6 Q. And who was insured pursuant to this insurance policy?
- 7 A. Chubb Insurance Company.
- 8 Q. So Chubb is up in the top right?
- 9 A. That is correct.
- 10 Q. Is Chubb the carrier? 01:49:00
- 11 A. Yes, it would be.
- 12 Q. And let me ask you, who is insured?
- 13 A. James Parker, Trust Manager, Cornerstone Resource Trust.
- 14 Q. And what's the P.O. Box there?
- 15 A. P.O. Box 5722, Carefree 85377. 01:49:18
- 16 Q. And what's the location or description of the property?
- 17 A. 35802 North Meander Way, Carefree, Arizona 85377.
- 18 Q. So for that term, from August of '99 to August of 2011,
19 Chubb was the carrier that insures the property; is that right?
- 20 A. Yes. 01:49:46
- 21 Q. So if something happened to the property, Chubb would
22 reimburse the cost of fixing the property?
- 23 A. Chubb would be the insurance carrier on any damages there,
24 yes.
- 25 Q. And if I could ask you to just maybe pull your chair a 01:49:57

United States District Court

THOMAS P. BOWMAN - Direct

1 little closer. 01:50:00

2 A. Okay.

3 Q. Let's go to the bottom portion of the same document. Just
4 actually the -- maybe the middle section there. And this is
5 again the same document in August of 1999. Can you tell us the 01:50:12
6 amount of insurance that was taken out for the dwelling?

7 A. \$525.

8 Q. What about for other structures and personal property?

9 A. Other structures was 105,000, personal property was
10 367,500. 01:50:36

11 Q. So in 1999, had the house, if the house had an unfortunate
12 accident or there was an unfortunate fire and everything was
13 destroyed, are these the limits of what Chubb would spend in
14 replacing this stuff?

15 A. Correct. 01:50:51

16 Q. Let's go to Exhibit 580 and let's just do the top portion.
17 Is this similar to the last document we just looked at?

18 A. Yes, with the exception of the dates.

19 Q. So the date of this is August 10, 2011?

20 A. That is correct. 01:51:24

21 Q. And this covers the period from 2000 and 2001?

22 A. Correct.

23 Q. And the same insured party and insured property?

24 A. That is correct.

25 Q. All right. I would like to direct your attention to 01:51:39

United States District Court

THOMAS P. BOWMAN - Direct

1 Government Exhibit 579. Let's just do the top portion of the 01:51:57
2 letter. What is 579? What is contained in there?
3 A. This would be a letter that we would send out with our
4 insurance policy to the insured.
5 Q. And I see the letterhead at the top. Is that your 01:52:27
6 address?
7 A. Yes.
8 Q. And then the date, what's the date on there?
9 A. The 3-1-2002.
10 Q. And who is it addressed to? 01:52:37
11 A. James R. Parker.
12 Q. And the same P.O. Box that we discussed before?
13 A. Yes.
14 Q. It says, "Enclosed please find your dwelling policy," and
15 it's signed by a number of individuals. Do you know those 01:52:49
16 individuals?
17 A. Yes.
18 Q. Are they employees?
19 A. Yes.
20 Q. And let's go to Exhibit 577. This is also an additional 01:53:01
21 letter. What's the date of this letter?
22 A. July 26, 2002.
23 Q. And the name at the top of the letter, can you read that?
24 A. Robert W. Dietrich.
25 Q. And who is the letter sent to? 01:53:35

United States District Court

THOMAS P. BOWMAN - Direct

- 1 A. Mr. James Parker. 01:53:38
- 2 Q. And what's the substance of the letter?
- 3 A. It was requesting that his address be changed, Mr. Robert
4 Dietrich's address be changed on the policy.
- 5 Q. And why is that important? 01:53:54
- 6 A. Mr. Dietrich was the loan -- or the mortgagee of the
7 policy. His interest was carrying the loan.
- 8 Q. So if there was an accident, the mortgagee, the one that
9 is lending the money, wants to make sure that he's in contact
10 with the insurance company? 01:54:21
- 11 A. That his interest was protected, yes.
- 12 Q. Let's go to Exhibit 576. And what's the date of this
13 letter?
- 14 A. October 18, 2002.
- 15 Q. And who is this addressed to? 01:54:54
- 16 A. Mr. James Parker.
- 17 Q. And what is the substance of this letter?
- 18 A. Again, it was referring to the -- having the correct
19 address of Mr. Dietrich as the mortgagee.
- 20 Q. Let's go to Exhibit 572 and let's go to page 54. So we 01:55:12
21 discussed the underwriter of Chubb and let's just do -- that's
22 fine. And at the top, is that the letterhead that was used by
23 Chubb when they are communicating with clients and customers?
- 24 A. Yes.
- 25 Q. And what is the effective date of this insurance policy? 01:55:51

United States District Court

THOMAS P. BOWMAN - Direct

1 A. August 4, 1999 to August 4, 2000. 01:56:00
2 Q. That's the policy period?
3 A. Yes, it would be.
4 Q. Okay. And that's just a little below the effective date?
5 A. Correct. Policy number 11785271-01. 01:56:11
6 Q. All right. And then the name and address of the insured
7 again?
8 A. James Parker, P.O. Box 5722, Carefree, Arizona 85377.
9 Q. And, again, just -- you see the home, it lists the same
10 address that we just discussed, the Meander Way address. 01:56:38
11 A. Yes, it does.
12 Q. And, again, it lists the coverage for the dwelling and the
13 contents?
14 A. Yes.
15 Q. And the contents, that's the 367,600 number? 01:56:51
16 A. Yes, it would be.
17 Q. Let's go to page 52. And this is a document reflecting
18 the same policy period of 1999 to 2000?
19 A. Correct.
20 Q. And what is the premium that is associated with that time 01:57:19
21 period?
22 A. \$1,570.
23 Q. And this includes -- the property covered by that premium
24 includes a property just below in the section?
25 A. Yes. It covers the dwelling amount of \$525,000 and other 01:57:35

United States District Court

THOMAS P. BOWMAN - Direct

1	structures of \$105,000.	01:57:41
2	Q. Okay. And then going on to page 50, you can click out of	
3	there. Sort of the middle of the page. Is that the final	
4	premium of the home and the contents?	
5	A. Yes, it would be.	01:58:12
6	Q. And going to the top of the page, this is the same	
7	effective date of August 4, 1999?	
8	A. That's the effective date, yes.	
9	Q. Let's go to page 43. And this is -- what's the effective	
10	date on this insurance record?	01:59:01
11	A. Effective date is August 4, 1999 to August 4, 2000.	
12	Q. Okay. It has a policy period?	
13	A. Correct.	
14	Q. And the same name and address of the insured?	
15	A. That is correct.	01:59:16
16	Q. And let's go to the bottom of the screen, and the new	
17	coverage that is listed on the right. Is that the coverage for	
18	the dwelling?	
19	A. Correct.	
20	Q. Let's go to page 38 of the record. And for the policy	01:59:38
21	period of August 4, 2000 to August 4, 2001, what was the total	
22	amount covered for the home?	
23	A. \$603,000.	
24	Q. And, again, who was the individual's insurer?	
25	A. James R. Parker, Trust Manager, Cornerstone Resource	02:00:15

United States District Court

THOMAS P. BOWMAN - Direct

1	Trust.	02:00:19
2	Q. And let's go to page 28. And just the top portion, what	
3	is the policy period reflected in this insurance document?	
4	A. August 4, 2001, to August 4, 2002.	
5	Q. And what was the coverage of the home for that period?	02:00:44
6	A. \$640,000.	
7	Q. And, again, the same insured, James Parker?	
8	A. James Parker.	
9	Q. And let's go to page 31. For this same time period of	
10	August of 2001 to August of 2002, what was the premium?	02:01:18
11	A. \$1,928.	
12	Q. And that is -- is that a yearly premium, by the way?	
13	A. That would be an annual premium, yes.	
14	Q. Annual, okay. And then moving on now to page 11 and this	
15	is the policy period of August 2002 to August of 2003?	02:01:41
16	A. Yes. That is correct.	
17	Q. And what is the amount of coverage in the home for that	
18	period?	
19	A. \$1,500,000.	
20	Q. And the other permanent structures?	02:01:54
21	A. Is \$300,000.	
22	Q. Why is there two -- why are there two line items for	
23	permanent home and structures?	
24	A. Permanent structures would be other structures attached to	
25	the home.	02:02:10

United States District Court

THOMAS P. BOWMAN - Direct

1 Q. For example? 02:02:10

2 A. A pool, a fence.

3 Q. Let's go to page nine and let's go to the top first. And

4 the effective -- inception date of August 4, 2002, or the

5 effective date? 02:02:37

6 A. August 4, 2002.

7 Q. And, again, the name of the insured is the same name?

8 A. Yes.

9 Q. Go to the bottom of the screen. So for the new term,

10 August 4, 2002 starting -- what's the total net premium at the 02:02:47

11 bottom?

12 A. Is \$4,140.

13 Q. Now, did there come a point in time that -- well, let me

14 just rephrase it. Let's go to page three of the record and I

15 just wanted to focus in on the handwritten -- let me back up. 02:03:06

16 This document looks just like the other documents we've looked

17 at; right?

18 A. Yes.

19 Q. I mean similar. It contains, essentially, coverage

20 information for a home or personal property or permanent 02:03:18

21 structures?

22 A. That is correct.

23 Q. Now, I just want to focus in on the bottom portion of the

24 page where there's handwritten stuff. The handwritten stuff at

25 the bottom, do you recognize that handwriting? 02:03:32

United States District Court

THOMAS P. BOWMAN - Direct

1 A. Yes, I do. 02:03:35
2 Q. And whose handwriting is that?
3 A. Larry Ball.
4 Q. And it's my understanding that he is deceased. Is that
5 true? 02:03:43
6 A. That is correct.
7 Q. Let's look at the date -- it looks like it says renewed to
8 8-4-03. Can you read what it says after that?
9 A. It says, "Told James these must be done. Central station
10 alarm. Sprinkler? Doesn't have to have but" something "credit 02:04:04
11 for this."
12 Q. Okay.
13 A. "Hydrant within 1,000 feet. Is pool filled. Must be
14 filled. Heat detectors in garage & media rooms."
15 Q. And being that you're in the business of selling 02:04:26
16 insurance, are these issues that sometimes crop up when you are
17 renewing a policy?
18 A. Yes, they would.
19 Q. And is it fair to say that your former colleague, he
20 jotted down some of these issues on one of the insurance 02:04:40
21 documents? Is that what it looks likes?
22 A. Correct.
23 Q. What's the issue with -- just, for example, what's the
24 issue with the water hydrant?
25 A. The hydrant is, basically, a fire protection rating and 02:04:53

THOMAS P. BOWMAN - Direct

1 within a thousand feet, it gives it a lower fire protection 02:04:58
2 code than it would if it was over a thousand.

3 Q. Okay. And fair to say, then, that Mr. Ball, then, kept
4 note of what he told James that must be done with regards to
5 his home? 02:05:15

6 MR. MINNS: Leading.

7 THE COURT: Sustained.

8 BY MR. PERKEL:

9 Q. Is it -- is it common to write down notes about things in
10 the house that have to be done? 02:05:24

11 MR. MINNS: Leading.

12 THE COURT: Overruled.

13 THE WITNESS: Yes.

14 BY MR. PERKEL:

15 Q. Okay. Now, let's turn to page two of the exhibit and, 02:05:29
16 again, this looks like another one of those Chubb -- Chubb
17 meaning the carrier -- insurance documents that explain the
18 policy and the terms that we've looked at. Let's just look at
19 the top portion of the document.

20 MR. MINNS: Pardon me, Your Honor. I ask that the 02:05:55
21 narrative be stricken.

22 THE COURT: All right. Ask a question.

23 Ladies and gentlemen, the statement made by counsel
24 is stricken.

25 And you are to ask a question. 02:06:07

THOMAS P. BOWMAN - Direct

1 BY MR. PERKEL: 02:06:14

2 Q. All right. Let's look at the first handwritten note.

3 Does this look like the writing of Mr. Ball again?

4 A. Yes, it is.

5 Q. And at the top there's a date 7-18-03, let's highlight the 02:06:22

6 date and the text. Can you read the text next to it?

7 A. "James leaving on business trip, told him alarm must be

8 working."

9 Q. Okay. And I want to go just below that to the right here.

10 I'm actually going to make a mark on the screen with red. Can 02:06:47

11 you read what it says there?

12 A. "\$2,250,000."

13 Q. And what about just to the right of that red line?

14 A. "Steam and shower in master."

15 Q. Okay. Can you keep on going? 02:07:12

16 A. "Air purifier, Mexican tile, art flat, five bath, custom

17 kitchen." Do you want me to keep going?

18 Q. Is that all you can read or can you read more?

19 A. "Two stories, 7,000 square feet, 3600 lower, deck 2000."

20 Q. Let's go to the bottom portion of the page. This number 02:07:49

21 here, I'm going to put a little mark next to it where the red

22 is. Do you recognize that number, the \$2 --

23 A. \$2,556,000.

24 Q. Where does that come from?

25 A. It probably came from some type of a cost estimator. 02:08:24

United States District Court

THOMAS P. BOWMAN - Direct

- 1 Q. And, again, this is about the 2002 period. Is that fair 02:08:27
2 to say?
- 3 A. 2002, correct.
- 4 Q. All right. What about here? I'm going to also make
5 another red mark. Can you read what that says just below that 02:08:40
6 red line?
- 7 A. "Add 350,000 contents."
- 8 Q. And what's the date?
- 9 A. 4-23-03.
- 10 Q. Does it say "per James"? 02:08:52
11 A. "Per James," correct.
- 12 Q. And let's take here at the bottom, right below the red
13 line, do you see what that says?
- 14 A. It says, "Ownership change, Sunlight Financial, LLC."
- 15 Q. Let me direct your attention to Exhibit 581 and let's go 02:09:44
16 to page three of the exhibit.
- 17 Was there a point in time that Chubb Insurance or
18 Chubb, the carrier, stopped insuring the property?
- 19 A. Yes, there was.
- 20 Q. And do you recall when that was? 02:10:18
21 A. I believe it was in 2003 there.
- 22 Q. Okay. And did you -- in looking at the bottom e-mail,
23 just on the bottom half of the screen, it looks like an e-mail
24 from -- who is that e-mail from?
- 25 A. This would be from the Chubb underwriter. 02:10:40

United States District Court

THOMAS P. BOWMAN - Direct

1 Q. Okay. And he's addressing it to whom? 02:10:43

2 A. He's addressing it to myself and Larry.

3 Q. And without reading the entire e-mail, what was the

4 substance of that e-mail?

5 A. He was looking for the pool to be finished and filled that 02:10:55

6 would be acceptable for them to reinstate.

7 Q. Okay. And then let's go up to the top of the screen. And

8 did Mr. Ball write back to the Chubb representative about it?

9 A. Yes, he did.

10 Q. And let's -- if I get to the beginning of the e-mail, let 02:11:18

11 me just quickly go to page two of the exhibit and just the

12 bottom portion of that e-mail.

13 So Mr. Ball responded to Kenny from Chubb, and what

14 does it say there?

15 A. It says, "Kenny, thanks for replying. Just had a couple 02:12:00

16 of concerns. You were on the risk during the course . . ."

17 Q. Let's go to the next page and let's now go to the top of

18 this page. This is the continuation of the e-mail. "Course

19 of"?

20 A. " . . . of construction, and now since he has moved in you 02:12:18

21 have wanted to get off the risk. All security is in place and

22 pool has been filled to about the level of a regular sized

23 pool. This pool is huge.

24 "Also, the notice of cancellation that you sent to

25 James stated that the termination was due to the contract being 02:12:45

United States District Court

THOMAS P. BOWMAN - Direct

1 terminated with the producer." 02:12:46

2 Q. And without going through the rest of the e-mail, is
3 this -- does this e-mail, then, address the reasons why Chubb
4 declined to continue insuring the property?

5 MR. MINNS: Leading. 02:12:56

6 THE COURT: Sustained.

7 BY MR. PERKEL:

8 Q. Why did Chubb continue -- why did Chubb decide not to
9 continue insuring the property?

10 A. The recommendations, they felt was not completed. 02:13:05

11 Q. And let's go to the third paragraph from the top where it
12 says "also." Actually, that's fine. Start with that paragraph
13 "also" from the top, sorry.

14 If you could read to us that paragraph.

15 A. "Also, the notice of cancellation that you sent to James 02:13:34
16 stated that the termination was due to the contract being
17 terminated with the producer."

18 Q. And then let's go to the bottom or the second "also" is
19 and if you could just read us what that says.

20 A. "Also, Mr. Parker never received the current inspection, 02:13:51
21 although he called the person that did the inspection, and she
22 said that it would be going out to him. I assume that the
23 requirements for the renewal would accompany the inspection."

24 Q. Okay. I want to now direct your attention to the
25 appraisal inspection, Government's Exhibit 575, page two. Just 02:14:16

THOMAS P. BOWMAN - Direct

- 1 the top half of the sheet. What does this appear to be? 02:14:27
- 2 A. This would be an appraisal worksheet.
- 3 Q. And can you tell us the name and address on the top left
- 4 portion?
- 5 A. James Parker, 35802 North Meander Way, Carefree, Arizona 02:14:38
- 6 85377.
- 7 Q. And the person interviewed?
- 8 A. Mr. Parker.
- 9 Q. And on what date?
- 10 A. June 4, 2003. 02:14:53
- 11 Q. And the appraisal that led to this inspection, did it lead
- 12 to a replacement cost of the house?
- 13 A. Yes, it did.
- 14 Q. And what was the total replacement cost?
- 15 A. It was going to be \$2,656.44. 02:15:09
- 16 Q. I read that as 2 million. Is that -- is it two million?
- 17 A. It was \$2,656,244.
- 18 Q. Okay. Did there come a point in time then, after Chubb
- 19 decided not to continue the insurance, that another insurance
- 20 carrier became involved with Mr. Parker and the home? 02:15:41
- 21 A. Yes.
- 22 Q. Let's go to Exhibit 571 and let's just go to the top
- 23 portion. Is this the application for the new insurance?
- 24 A. Yes, it was.
- 25 Q. And what's the effective date of the application? 02:16:13

United States District Court

THOMAS P. BOWMAN - Direct

- 1 A. 8-15-2003. 02:16:15
- 2 Q. And who is the applicant there?
- 3 A. Sunlight Financial, LLP.
- 4 Q. And what's the residence that is the property location?
- 5 A. 35802 North Meander Way, Carefree, Arizona 85377. 02:16:28
- 6 Q. And what does it say about the applicant? It looks like a
- 7 James Parker and what does it say next to his name?
- 8 A. Tenant.
- 9 Q. Do you recognize the writing on this, by the way?
- 10 A. Yes, I do. 02:16:47
- 11 Q. And whose writing is this?
- 12 A. Larry Ball.
- 13 Q. And let's go to the bottom portion of the screen and just
- 14 the bottom half. And what is the amount of coverage now?
- 15 A. \$2,656,000. 02:17:02
- 16 Q. And the personal property?
- 17 A. \$500,000.
- 18 Q. And the \$500,000, is that a number that comes from
- 19 Mr. Ball or is that a number that comes from the customer.
- 20 A. It would have been a number that would have come from 02:17:19
- 21 discussion between the two of them.
- 22 Q. Okay. Let's go on now to Exhibit 574. And at the top,
- 23 what does it say there at the top?
- 24 A. That's just a transmission confirmation.
- 25 Q. Is this with regards to James Parker? 02:17:52

United States District Court

THOMAS P. BOWMAN - Direct

1 A. Yes, it is. 02:17:56

2 Q. And now let's go to the bottom portion of the exhibit.

3 Actually, the two-thirds of the bottom. Great. So is this --

4 does this look like your letterhead from your agency?

5 A. This would be a fax cover sheet, yes. 02:18:11

6 Q. A fax cover sheet. And can you tell me who is this fax

7 cover sheet to?

8 A. This would be going to Laura at Auto Owner's Underwriting.

9 Q. And I see the name Larry after the Bowman. And this is in

10 regards to who? 02:18:39

11 A. James Parker.

12 Q. And can you just read what it says in the comments

13 section?

14 A. "Tommy suggested that I fax this out to you, as binding

15 coverage at least on the dwelling at this time." 02:18:52

16 Q. And what's the date of this transmission?

17 A. August 15, 2003.

18 Q. Now, Tommy, he's referencing you?

19 A. That's correct.

20 Q. What's the point of this fax transmission? Why are you 02:19:10

21 sending this off on the same day as the application?

22 A. We are putting the company and owners on notice that they

23 are securing coverage for this property.

24 Q. Now, let's go to Exhibit 570.

25 THE COURT: Let's stop. 02:19:29

United States District Court

THOMAS P. BOWMAN - Direct

1 Ladies and gentlemen, we'll take a break. 20 02:19:30
2 minutes.
3 We're in recess.
4 COURTROOM DEPUTY: All rise.
5 (Jury departs.) 02:19:52
6 (Recess at 2:19; resumed at 2:48.)
7 (Jury enters.)
8 (Court was called to order by the courtroom deputy.)
9 THE COURT: Please be seated.
10 All right. Mr. Perkel? 02:48:18
11 MR. PERKEL: Thank you, Your Honor.
12 BY MR. PERKEL:
13 Q. Before we took our break, I directed your attention to
14 Exhibit 570 and it's on the page -- page 20. Let's just go to
15 the top of the page of the exhibit. What is Auto-Owners? 02:48:29
16 A. Auto-Owners is an insurance carrier.
17 Q. And so after Chubb declined -- after Chubb was stopped,
18 after -- excuse me. Let me withdraw that question.
19 After Chubb stopped insuring the house, your company
20 got the Auto-Owners insurers. Is that fair to say? 02:48:52
21 A. Yes. That is correct.
22 Q. And can you give me the policy term? What were the dates?
23 A. August 15, 2003, to August 15, 2004.
24 Q. And that covers that whole year of August 15 of '03 to
25 '04? 02:49:14

United States District Court

THOMAS P. BOWMAN - Direct

1	A. Yes. That is correct.	02:49:15
2	Q. And at the top, it looks like somebody wrote in the name	
3	Jim Parker. Do you recognize that handwriting?	
4	A. Yes, I do.	
5	Q. And whose is that?	02:49:23
6	A. Judy Bowman.	
7	Q. And is she related to you?	
8	A. She is my mother.	
9	Q. She also works there?	
10	A. She is deceased.	02:49:34
11	Q. Okay. Let's go to the bottom of the screen. Well, let's	
12	go to the two-thirds down. And this is the location of -- same	
13	location, 35802 North Meander Way.	
14	A. Yes, it is.	
15	Q. And the dwelling, what was the limit on the dwelling or	02:50:01
16	the amount of insurance taken out of the dwelling?	
17	A. \$2,656,000.	
18	Q. And what was the annual premium?	
19	A. I'll have to move down to the bottom to get the full	
20	annual. That would be it's \$8,695.09.	02:50:18
21	Q. Okay. And how much insurance was taken out for personal	
22	property?	
23	A. Personal property, \$500,000.	
24	Q. And the insurance for personal property, what does that	
25	cover?	02:50:49

United States District Court

THOMAS P. BOWMAN - Direct

1 A. Anything inside the house, your contents, inventory, 02:50:50
2 whatever you would have that -- personal belongings.
3 Q. Let's move on to Exhibit Number 14 -- excuse me, page 14,
4 I'm sorry. And, again, the top of the page, what's the policy
5 term associated with the top of the page? 02:51:18
6 A. August 15, 2004, to August 15, 2005.
7 Q. And, essentially, the same insured party and the same
8 address that we've discussed?
9 A. Yes, Sunlight Financial, LLC, correct.
10 Q. And let's go to the middle section of the page and what 02:51:36
11 was the amount of insurance taken out on the dwelling?
12 A. \$2,774,500.
13 Q. And the amount of insurance on the personal property?
14 A. Personal property was \$500,000.
15 Q. And what is the -- go to the bottom of this screen. What 02:52:03
16 was the total policy premium for that period of time?
17 A. \$10,324.22.
18 Q. And, again, that \$10,000, that's approximately a yearly
19 premium?
20 A. Yes. 02:52:21
21 Q. And let's go to page 11 of the exhibit and this record
22 reflects what policy period?
23 A. August 15, 2005, to August 15, 2006.
24 Q. And, again, where you see the insured party Sunlight
25 Financial with handwritten James Parker in there? 02:52:41

United States District Court

THOMAS P. BOWMAN - Direct

1 A. Yes. 02:52:45

2 Q. And the same P.O. Box that we discussed?

3 A. Yes, that is correct.

4 Q. And let's go down to the second portion of the screen

5 starting at the location. And for that location, 35802 North 02:52:56

6 Meander, what was the limit on insurance for the dwelling?

7 A. \$2,860,500.

8 Q. And what was the annual premium for the '05 and '06 year?

9 A. \$11,704.89.

10 Q. And just going back to the screen itself, the same amount 02:53:27

11 of personal property was taken out, \$500,000?

12 A. Yes, that is correct.

13 Q. You can see it.

14 And I see there there's an other structure. Is that

15 different or what is that? 02:53:46

16 A. Other structures are items that are not -- that are not

17 attached to the dwelling itself such as the pool or fence.

18 Q. Okay. And the amount of the other structures, is that

19 \$296,000, approximately?

20 A. Yes. It's 10 percent of the dwelling amount. 02:54:00

21 Q. And go to Exhibit Number 8 -- excuse me, page eight. And

22 at the top of this screen again, what is the term, the policy

23 term?

24 A. August 15, 2006, to August 15, 2007.

25 Q. And, again, same insured, Sunlight Financial with the name 02:54:25

United States District Court

THOMAS P. BOWMAN - Direct

1	James Parker?	02:54:31
2	A. Yes.	
3	Q. And let's go now to the bottom portion of the screen	
4	again. What was the coverage for the home?	
5	A. \$2,904,500.	02:54:41
6	Q. And for coverage for personal property?	
7	A. 500,000.	
8	Q. And going back to the screen itself, the full screen.	
9	Just at the bottom, it says "total policy premium," I don't	
10	know if you can read that or not.	02:54:58
11	A. \$11 --	
12	Q. Just above location, there's a total policy premium.	
13	A. \$11,871.54.	
14	Q. And, finally, going to page two of the exhibit, what's the	
15	policy term for the period of the coverage?	02:55:34
16	A. August 15, 2007, to August 15, 2008.	
17	Q. And just below that, the total policy, the yearly payment	
18	that was made for that period of time?	
19	A. \$12,137.17.	
20	Q. And, again, same insured reference with the name Sunlight	02:55:54
21	Financial and then handwritten James Parker?	
22	A. Yes.	
23	Q. And if we can go to the full screen and go to the amount	
24	of coverage that is on the home itself.	
25	A. \$2,991,500.	02:56:11

United States District Court

THOMAS P. BOWMAN - Direct

1 Q. Just for simplicity' sake, if there was an unfortunate 02:56:20
2 accident and something happened to the house, there was a fire,
3 is that the maximum amount that would be covered in terms of
4 replacing the house? Is that what that number means?
5 A. Yes, that is correct. 02:56:28
6 Q. And it looks like the same amount for personal property
7 was taken out.
8 A. Correct.
9 MR. PERKEL: Your Honor, if I could have one moment,
10 please. 02:56:37
11 THE COURT: Yes.
12 MR. PERKEL: No further questions.
13 THE COURT: All right.
14 Cross?
15 MR. MINNS: No, thank you, Your Honor. 02:56:46
16 THE COURT: All right.
17 You may step down.
18 (Witness excused.)
19 THE COURT: Your next witness?
20 MR. PERKEL: Thank you, Your Honor. The government 02:57:01
21 is calling Mr. Gibbs. And, Your Honor, at this time, I also
22 wanted to move into evidence a number of bank records that have
23 been certified --
24 THE COURT: All right.
25 MR. PERKEL: Not certified. They have a 902(11)cover 02:57:15

United States District Court

WALTER E. GIBBS - Direct

1 page. I apologize. 02:57:18

2 THE COURT: Okay. And read them off so Mr. Minns can
3 hear them and Ms. Arnett.

4 MR. PERKEL: Exhibits 48, 52, 54, 60, 67 and 69.

5 MS. ARNETT: We have no objection, Your Honor. 02:57:30

6 THE COURT: They are admitted.

7 (Exhibit Numbers 48, 52, 54, 60, 67 and 69 were
8 admitted into evidence.)

9 WALTER E. GIBBS,
10 called as a witness herein by the Government, having been first 02:57:37
11 duly sworn or affirmed to testify to the truth, was examined
12 and testified as follows:

13 COURTROOM DEPUTY: Please state your name for the
14 record and spell your last name.

15 THE WITNESS: My name is Walter, middle initial E, 02:57:52
16 last name Gibbs. G-I-B-B-S.

17 COURTROOM DEPUTY: Thank you. Have a seat right over
18 here, please, sir.

19 **DIRECT EXAMINATION**

20 BY MR. PERKEL: 02:58:18

21 Q. Good afternoon, Mr. Gibbs. Can you please introduce
22 yourself to the jury?

23 A. I'm sorry?

24 Q. Can you please introduce yourself to the jury?

25 A. Yes. My name is Walter Gibbs, Ernest Gibbs, and I worked 02:58:25

WALTER E. GIBBS - Direct

1 for American Express for a little over 35 years. Current 02:58:32
2 occupation is assistant custodian of records in which -- appear
3 in court, testimony, assisting in trials basically on
4 collection of card accounts but also on -- testify once we are
5 subpoenaed for witnesses. 02:58:56
6 Q. Okay. And, sir, if I can just ask you to speak a little
7 more closely to the microphone. The acoustics in here
8 sometimes is bad.
9 A. Okay.
10 Q. How long have you been working with American Express? 02:59:07
11 A. A little over 35 years. I started there November of '76.
12 Q. And what did you do before you started working with
13 American Express?
14 A. Well, I graduated from Kent State in '62, worked for
15 Pittsburgh Plate Glass for a while. Actually, I worked as a 02:59:26
16 credit manager then for what was then the Rhodes Department
17 Store in Phoenix and in '76 I went to American Express.
18 Q. And how long have you worked in the Department of
19 Custodian of Records?
20 A. That department was created March 1 of 2010 and I have 02:59:50
21 been on that team since March of 2010.
22 Q. What is that department responsible for?
23 A. The team consists of 11 people throughout the country and
24 we work on putting together cases that we're litigating as well
25 as appearing in court to subpoena -- testimony from subpoenas. 03:00:16

United States District Court

WALTER E. GIBBS - Direct

1 Q. And prior to working in the custodian department, what 03:00:22
2 were you doing with American Express?
3 A. The most recent 12 years I managed the bankruptcy
4 department. Prior to that, I was a manager in credit and in
5 the collection department. I was a supervisor for several 03:00:38
6 years in the credit and new accounts in the telephone service
7 center. And prior to that -- well, I started American Express
8 as a customer service representative.
9 Q. And, sir, in front of you, in a red folder is Government's
10 Exhibit Number 372. If you could just open up the exhibit. 03:01:04
11 A. M'hum.
12 Q. Do you see it there?
13 A. Yes.
14 Q. Can you look through it real quickly?
15 MS. ARNETT: We have no objection to 372, Your Honor. 03:01:19
16 MR. PERKEL: Okay.
17 THE COURT: It's admitted.
18 MR. PERKEL: Thank you.
19 (Exhibit Number 372 was admitted into evidence.)
20 BY MR. PERKEL: 03:01:25
21 Q. I want to ask you generally about the first 221 pages of
22 the exhibit. Have you had a chance to look through those first
23 221 pages before testifying today?
24 A. Yes, I have.
25 Q. The copy that you have, does it have numbers at the 03:01:42

United States District Court

WALTER E. GIBBS - Direct

1 bottom? 03:01:44

2 A. Yes.

3 Q. Does it have numbers on the bottom right-hand part?

4 A. Yes.

5 Q. And so the first 221 pages of the exhibit, what do those 03:01:50

6 business records consist of?

7 A. Well, let's see. Well, the first couple pages are

8 documents that pertain to the subpoena, and on page '06 it

9 begins the monthly American Express billing statements.

10 Q. Let's turn to page six and it's on the screen in front of 03:02:27

11 you as well. So is this, essentially, the first 221 pages, are

12 these essentially a copy of a credit card statement that one

13 would normally receive in the mail? Is this kind of what the

14 customer gets?

15 A. That's correct. 03:02:47

16 Q. Okay. And since we're on page six and we're at the top

17 portion, can you just tell us who the customer is on page six

18 at the top?

19 A. Yes. The basic card member on this account is Jacqueline

20 L. Parker. 03:03:02

21 Q. And what is the account number associated with this

22 account?

23 A. The account number should be redacted but it ends in

24 41000.

25 Q. And what is the closing date on the account? 03:03:15

United States District Court

WALTER E. GIBBS - Direct

1 A. August 19, 2004. 03:03:19

2 Q. Have you had a chance to -- well, let me ask you, based on
3 your work, do you know whether this is a credit card account
4 for personal use or business use?

5 A. There are many different types of credit cards that can be 03:03:38
6 obtained through American Express. This card is a personal
7 gold card.

8 Q. Now, let's go to page 12 of the exhibit and let's go to
9 the top portion.

10 This is the very similar document as the one we just 03:04:12
11 looked at. What is the closing date on this document?

12 A. This closing date is September 20, 2004.

13 Q. And, again, prepared for Jacqueline Parker as a customer?

14 A. Yes.

15 Q. Same account number? 03:04:26

16 A. Same exact account number, yes.

17 Q. And then right below that there are four boxes. These are
18 the boxes that are -- show up on the different statement
19 balances. Can you tell us what is in the first box where it
20 says "previous balance"? 03:04:41

21 A. The first box would be the previous balance, the ending
22 balance on the most previous statement. In the second box
23 would be any payments that would have been applied to the
24 account. The third box would be any new charge activity that
25 is applied to the account, and then the ending balance for the 03:05:00

United States District Court

WALTER E. GIBBS - Direct

1 statement ending September 20, 2004. 03:05:04

2 Q. And that new balance that is reflected there, the \$2,955?

3 A. And eight cents, yes, it is.

4 Q. Is that the balance that is then carried on to the next

5 credit card statement? 03:05:19

6 A. Yes, it would.

7 Q. And let's go to the screen itself and just in the activity

8 section, and is this the portion of the statement -- well, this

9 portion of the statement, what does it reflect?

10 A. Well, this shows the type of activity. In this case there 03:05:39

11 are three transactions that are on September 18. There was a

12 charge made at Antique Gatherings for \$1,304.25. On September

13 18, one charge made at the Scottsdale Marketplace Home

14 Furnishings for \$653.10. On September 19, a charge of World

15 Designs for miscellaneous home furnishings for \$1,000 even. 03:06:13

16 Q. And then you see below the total due?

17 A. Yes.

18 Q. Okay. And then going back to the full screen, that really

19 is just the same number that is up at the top. If we could

20 focus in at the top again. Is that just the same number for -- 03:06:32

21 it's the new activities box at the top?

22 A. Yes, that's correct.

23 Q. The box to the left of the arrow; is that correct?

24 A. Yes, that's the total of the charges that was made that

25 month. 03:06:56

United States District Court

WALTER E. GIBBS - Direct

1 Q. Okay. 03:06:56

2 Now, if you could now flip to pages 222 through 291

3 of the exhibit. And we have on the screen page 222. You can

4 also -- you have the exhibit in front of you. These pages,

5 what do these pages represent? What type of business record is 03:07:23

6 contained in these pages?

7 A. American Express, for audit purposes, maintains them on a

8 separate screen. The payment that was made, the bank account

9 number, the dollar amount, the bank it came from, the account

10 number it was posted to. 03:07:45

11 Q. And these records, then, reflect the amount of money that

12 was used to pay a balance on a credit card statement?

13 A. These records reflect the exact amount of a payment made

14 on an account, yes.

15 Q. And do the records -- can the records be used to also 03:08:07

16 indicate where the money came from?

17 A. As far as the bank is concerned? Yes.

18 Q. Correct. From what bank account the money comes from?

19 A. This money came from Harris Bank, NA.

20 Q. And just above -- for example, this one, let's just do 03:08:28

21 this one to make it easier. Just above the Harris Bank, do you

22 see the ABA number? Is that just a routing number?

23 A. That would be the routing number, yes.

24 Q. And the DDA number, what does that reference?

25 A. That is the direct deposit account. 03:08:43

United States District Court

WALTER E. GIBBS - Direct

1 Q. Is that just the account number from where the money came 03:08:48
2 from?
3 A. It would be the account number, yes.
4 Q. And do you see a date there that is the processing date on
5 the right-hand side? 03:09:01
6 A. Yes. This check was processed October 8, 2004.
7 Q. And does it tell you the amount that was posted?
8 A. The amount was exactly \$3,000.
9 Q. And so do customers get this record as well as the credit
10 card statements we just looked at? 03:09:20
11 A. No, they do not.
12 Q. I just want to -- let's turn to page -- well, keep the
13 \$3,000 in the back of your mind, but let's turn to page 18 of
14 the exhibit.
15 A. I'm sorry. Which page? 03:09:48
16 Q. 18. We're going to put it on the screen in front of you.
17 A. Oh, okay.
18 Q. So there you see a payment of \$3,000, is that right, on
19 the credit card statement?
20 A. That's correct. 03:10:02
21 Q. And so in a sense, that \$3,000 matches this \$3,000;
22 correct?
23 A. That is correct.
24 Q. Let's -- I want to turn to page 48 of the exhibit. Let's
25 take a look at the top, same name, same account number; 03:10:31

United States District Court

WALTER E. GIBBS - Direct

1	correct?	03:10:34
2	A. Yes, that's correct.	
3	Q. And we see a previous balance. It looks like a credit of	
4	3524.	
5	A. That's correct.	03:10:48
6	Q. And then let's look at the new activity. Is that \$971.82?	
7	A. Those are total charges made in that monthly billing.	
8	Q. And then a new balance looks like \$936.58; is that right?	
9	A. That's correct.	
10	Q. Let's look at the total charges on the middle section of	03:11:01
11	the page. Can you tell us where the credit card was used?	
12	A. There was a charge made on January 26 of 2005 at the Spa	
13	Dolce, I guess is how you pronounce that, in Scottsdale for	
14	\$635.16. There's a charge on January 31 of 2005 at Franco's	
15	Ristorante for \$113.38, and there was a charge February 1 of	03:11:29
16	2005 of Shillelagh's Ole for \$98.28. And then there was an	
17	annual membership renewal fee for \$90.	
18	Q. And that gives us a transaction total of \$936.82?	
19	A. Yes.	
20	Q. And so the new balance at the top again, if we could just	03:12:06
21	focus back on the new balance of \$936.58?	
22	A. \$936.58, that's correct.	
23	Q. Now, let's go down to page 66 of the exhibit and just the	
24	top portion, like there was a payment of \$940; is that right?	
25	A. That's correct.	03:12:32

United States District Court

WALTER E. GIBBS - Direct

1 Q. And this is the credit card statement following the one we 03:12:35
2 just looked at; is that correct?
3 A. That's correct.
4 Q. And the date of this one is April 20, 2005?
5 A. Yes. 03:12:46
6 Q. And if we can go to the full screen again. Can you see
7 the specific date of the payment received? Is that right?
8 A. Yes. That's correct.
9 Q. Now I want to turn now to page 224 of the exhibit and
10 let's just focus in on that record. 03:13:13
11 Is this the corresponding payment record associated
12 with that credit card statement we just looked at?
13 A. Yes, it is.
14 Q. And can you -- is the posted amount \$940, we're going to
15 highlight that in yellow -- can you see that? 03:13:28
16 A. Yes. That was \$940 even.
17 Q. And it came from what bank?
18 A. Tran process date was April 1 of 2005.
19 Q. Okay. And what is the bank that's listed where the money
20 came? 03:13:46
21 A. From -- this was drawn on the Harris Bank, NA.
22 Q. And it gives the account number at the top?
23 A. That would be the DDA number, yes.
24 Q. Again, this record reflects the money posted and where the
25 money came from; correct? 03:14:04

United States District Court

WALTER E. GIBBS - Direct

1 A. The bank that it came from, yes. 03:14:05

2 Q. Excuse me. The bank that it came from. Now, I want to

3 turn to those bank records. I want to go to Exhibit 52, page

4 59?

5 MR. SEXTON: Page what? 03:14:21

6 MR. PERKEL: Exhibit 52, page 59.

7 MR. SEXTON: Thank you.

8 BY MR. PERKEL:

9 Q. Let's just go to the top portion. This is -- can you read

10 the account number at the top? 03:14:35

11 A. Yes. 004810035.

12 Q. That's the account number that matches up to that American

13 Express record with regards to the payment?

14 A. Yes, it does.

15 Q. And can you read what bank account this belongs to or who 03:14:56

16 is the holder of the bank account?

17 A. The name on the checking account is the Omega

18 Construction, Inc., P.O. Box 5722, Carefree, Arizona.

19 Q. Let's jump out of that screen and go to just the bottom

20 portion. Let's look for the April 4 check if we can highlight 03:15:22

21 it in yellow, make it easier. That is the amount, \$940.

22 A. Yes. That is the check for the \$940 which, undoubtedly,

23 is the payment that applied to the card account April 1 and

24 processed the bank statement on April 4.

25 Q. Okay. And I want to now go to page 185 of this same 03:15:49

United States District Court

WALTER E. GIBBS - Direct

1 exhibit and there is a check. Is that fair to say? 03:15:54

2 A. That's correct. The check was written March 29, '05, to

3 American Express, \$940 even. The account number is written in

4 the memo line, which is the exact account number on this credit

5 card, and it has the same DDA number, the same account number, 03:16:22

6 as the exhibits we just looked at.

7 Q. So this amount of money -- or this check was used to

8 basically pay the balance on that American Express for those

9 expenditures?

10 A. That's correct. 03:16:39

11 Q. And now let's go to page 66 of the original American

12 Express exhibit, which is 372.

13 A. April 20, 2005, billing statement?

14 Q. That's correct, sir. Just the top portion of the screen.

15 We're left with a balance after that 940 of, what, \$3,477? 03:17:01

16 A. Those were the charges that came forward from the previous

17 month billing statement.

18 Q. Okay. Let's look at that previous month. It is on page

19 56 and, okay, I see -- let's go to the middle of the page.

20 A. Yes. 03:17:33

21 Q. Can you tell us what was spent on what date?

22 A. There was one charge on March 4, 2005, the Stratford Court

23 in Scottsdale, Home Furnishings for \$2,288.40. And that's the

24 only charge made on that statement that month.

25 Q. And then going back to page 66 of the exhibit, that's how 03:18:00

United States District Court

WALTER E. GIBBS - Direct

1 we end up with the balance of \$3,477.78? 03:18:07

2 A. The previous balance was the beginning balance, yes.

3 Q. And then let's go to page 74 of this same exhibit and in
4 the middle of the page, if you can see under Activity, it looks
5 like there's a payment. 03:18:25

6 A. There was a payment received on May 4, 2005, in the amount
7 of \$3,477.78.

8 Q. Let's go to page 225 of the same exhibit and just at the
9 top. Can you see the amount that was posted as reflected in
10 the American Express payment records? 03:18:56

11 A. Here again, we're looking at the bank repository screen
12 and the payment was \$3,477.78. The process date, May 4, 2005.
13 Same DDA or the bank account number, drawn on Harris Bank.

14 Q. And let's go to, back to Exhibit 52, page 61. This is the
15 same account we just looked at for the company Omega
16 Construction? 03:19:35

17 A. Yes, that's correct.

18 Q. And now let's go to the bottom portion of this screen and
19 if we could highlight the check, the May 5 check, and there is
20 the -- that's a statement that reflects that payment. 03:20:00

21 A. Yes. The bank statement shows the process date of May 5
22 for the exact amount, \$3,477.78.

23 Q. Let's go to page 189 of this exhibit.

24 A. Yes.

25 Q. Again, this is the check, correct, that references -- 03:20:28

United States District Court

WALTER E. GIBBS - Direct

1 A. Yes. This is a photostat copy of the exact check dated 03:20:32
2 May 3, 2005, for \$3,477.78. The American Express account
3 number is written in the memo line drawn on Omega Construction
4 and the same DDA number or the same bank account number.
5 Q. Okay. I'm not going to go through all of the payments, 03:20:57
6 just a few more. But I wanted to turn your attention to page
7 96 of the original Exhibit 372.
8 A. I'm looking at that.
9 Q. And we're going to bring it up on the screen, too. Again,
10 this is the same customer, same account number; correct? 03:21:23
11 A. Yes. This is the account of Jacqueline Parker ending in
12 41000?
13 Q. And the closing date of this one?
14 A. This closing date is August 19, 2005.
15 Q. And let's go to the middle portion of the screen -- 03:21:37
16 A. Okay.
17 Q. -- where the expenditures are. Those show her
18 expenditures, the Target, Nature's Alternative, and the Bella
19 Vita Salon?
20 A. Yes. 03:21:55
21 Q. And the expenditures result in the total expenditures or
22 total activity of \$496.77?
23 A. That's correct.
24 Q. Going back to the top of the screen, what's the balance at
25 the end of this month? 03:22:11

United States District Court

WALTER E. GIBBS - Direct

1 A. The ending balance or the new balance as of this statement 03:22:12
2 ending August 19, '05, was \$429.93.

3 Q. And let's go to page 104 of this exact same exhibit and I
4 just want to go to the middle section -- well, let's go to the
5 top, I'm sorry, where you can just hit the closing date of the 03:22:33
6 statement. Is that the closing date of September 20, 2005?

7 A. September 20, 2005, that's correct.

8 Q. Just the very next month; correct?

9 A. Yes.

10 Q. And the payments is \$450. Is that the payment that was 03:22:52
11 recorded?

12 A. That was payment that was applied to the account, yes.

13 Q. Now, let's go to the middle of the page and the payment
14 was applied on what date?

15 A. The payment of \$450 was applied on September 12, 2006. 03:23:12

16 Q. Okay.

17 A. I'm sorry, 2005.

18 Q. And below, again, are the different new purchases in that
19 month; is that correct?

20 A. Below there are four transactions, yes, that would have 03:23:27
21 been charge card transactions for that billing period.

22 Q. Okay. I want to now -- the \$450 payment, I want to now
23 turn to page 228 of the same exhibit and the top portion.

24 A. Is, again, on the screen there, is the bank repository
25 screen. 03:23:58

WALTER E. GIBBS - Direct

1 Q. And this, again, indicates the bank and the amount 03:23:58
2 reflected with that specific payment?
3 A. Yes. Reflecting a payment of \$450, processed on September
4 12, 2005.
5 Q. And what bank did this come from? 03:24:13
6 A. This came from Metcalf Bank.
7 Q. And what's the account number associated with that?
8 A. The DDA or bank account number is 502030.
9 Q. Okay. Now, let's turn to one of the statements from
10 Metcalf Bank and let's turn to page 351 of Exhibit 67. Who is 03:24:33
11 the holder of the account for the record?
12 A. The name of the account here is Sunlight Financial, LLC,
13 and Samuel J. Parker.
14 Q. And what is the statement date?
15 A. This is the statement date of September 30, 2005. 03:25:12
16 Q. And let's go to the bottom of the screen. And let's look
17 for the left column, the payment of \$450 on or about September
18 14. If you can highlight that.
19 A. On that bank statement that month, on September 14 there's
20 a payment of \$450. 03:25:41
21 Q. And let's go to page 357 of the same exhibit. And this is
22 the corresponding check?
23 A. Yes. That would be the same check for \$450 drawn on
24 Sunlight Financial, LLC, dated September 7, 2005, with the
25 American Express account number written in the memo field. 03:26:07

United States District Court

WALTER E. GIBBS - Direct

1 Q. Let's turn to page 112 of Exhibit 372. 03:26:14
2 A. Okay.
3 Q. We've got -- this is the same account so let's just go on.
4 What is the new activity in the statement?
5 A. The new activity would be the charges made on the account 03:26:42
6 for that month, which is \$3,541.48.
7 Q. And what is the closing date?
8 A. This closing date September 20, 2005.
9 Q. And I don't know if I misheard you or not, sir. Is it
10 October 20 or September? 03:26:59
11 A. October 20, 2005.
12 Q. Okay.
13 A. I'm sorry if I said September.
14 Q. That's all right. And let's go to the middle of the page
15 and, again, to get to that new balance, we have to look at the 03:27:14
16 expenditures; is that correct?
17 A. Yes. The beginning balance minus the payments plus the
18 charges would make up the new balance.
19 Q. Okay. And it looks like there was a credit but there was
20 a 9-26-05 transaction. Can you read what that was? 03:27:31
21 A. That is from The Clothier.
22 Q. I'm not sure what shop that is but Sherres.
23 A. Well, the charge from Sherres or Sherres women's ready to
24 wear was, actually, September 26, 2005.
25 Q. What was the amount? 03:28:15

United States District Court

WALTER E. GIBBS - Direct

1 A. That was for \$2,437.49. 03:28:16

2 Q. And let's go to -- back out of the screen. And that's how
3 we have it that you balance up at the top and that's the new
4 balance of 3500 or \$3,540 approximately?

5 A. 63 cents, yes. 03:28:37

6 Q. And 63 cents. And let's go to page 120 of the same
7 exhibit. And let's go to just the middle portion. There was a
8 payment received in the subsequent statement on 11-2-05?

9 A. Yes, there was.

10 Q. And that was for \$3600? 03:28:59

11 A. 3600 even.

12 Q. And let's go to page 230 of the same exhibit and can you
13 tell us what information is reflected in this business record?

14 A. Again, this is American Express bank repository screen
15 dating a DDA number of 106127 drawn on First National Bank of 03:29:29
16 New Mexico. The process date of November 2, 2005. The check
17 amount of \$3,600.

18 Q. Let's go to page -- Exhibit 54, page 19. Up at the top,
19 the account number on the right-hand side.

20 A. Yes. 03:30:16

21 Q. What does that read?

22 A. That would be their bank account number for this specific
23 bank account.

24 Q. Okay. And this is for the statement period October 31,
25 2005, to November 30, 2005? 03:30:27

United States District Court

WALTER E. GIBBS - Direct

1 A. That's correct. 03:30:28

2 Q. And that bank account number is reflected in the

3 repository 16 we just looked at?

4 A. Yes, it did.

5 Q. What was the name of the entity that holds this bank 03:30:38

6 account?

7 A. This account was in the name of RSJ Investments, LLC, with

8 a P.O. Box in Kenton, Oklahoma.

9 Q. Let's go to the bottom portion of the screen. Let's go to

10 the left column where it says 11-4 and there's an amount for 03:31:06

11 \$3,600. Do you see that on the screen, sir?

12 A. Yes, I do. A debit transaction, actually, from the bank

13 account from November 4 for \$3,600 even.

14 Q. Let's go to page 20 of the same exhibit. And the first

15 column, the fourth one down, if we could just highlight that 03:31:38

16 check. Is this the corresponding check from RSJ Investments

17 for that amount?

18 A. Yes. It corresponds with the company name on the check

19 with the posted and processing date for the amount of \$3,600

20 with the American Express account number that it was posted to 03:31:57

21 written right in the memo field.

22 Q. And this amount of money was used to -- excuse me, to pay

23 off the balance on that American Express card; correct?

24 A. I don't know if it was the balance but it probably was,

25 yes. 03:32:16

United States District Court

WALTER E. GIBBS - Direct

1 Q. Well, pay off a portion of the balance. 03:32:16
2 A. That's right.
3 Q. Let's go to last transaction, let's go to page 176 of the
4 Exhibit 372.
5 A. Okay. 03:32:42
6 Q. The new activity -- well, what's the closing date of this
7 statement?
8 A. The new activity was \$1,018.22.
9 Q. Okay. And then what's the closing date?
10 A. Closing date was June 20, 2006. 03:32:57
11 Q. And let's go take a look at the activity and, again, these
12 are the purchases that were made?
13 A. Yes. The \$1,018.22 was a direct result of four charges
14 made that month, one at Target Stores for \$225.86 on June 1;
15 one at Southwest Craniofacial Center, \$151.13 on June 5; Animal 03:33:24
16 Health Services, \$406.23 on June 7; and Italian Grotto, \$235 on
17 June 12.
18 Q. Let's go back to do top of the page. That leaves us with
19 a new balance of \$1,015.65?
20 A. That's correct. 03:34:00
21 Q. And let's go to the statement that follows this one and
22 that's on page 184 of the exhibit. Let's go to the middle of
23 the page under Activity.
24 A. Yes. It shows a payment of \$1,015.65.
25 Q. Let's go to page 236 of the same exhibit. 03:34:27

United States District Court

WALTER E. GIBBS - Direct

1 A. Again, we're looking at a bank repository screen 03:34:36
2 indicating a different account number. A different bank. This
3 was drawn on First State Bank. The amount of the check posted
4 was \$1,015.65 and the process date on the check was July 3,
5 2006. 03:34:59
6 Q. Good. Now, I wanted you to take a look at page 76, page
7 142 and, again, let's go to the top of the screen. Let's just
8 start with the account number, can you read that to us, please.
9 A. It says the account number, it matches the previous check
10 which was assessed. 03:35:32
11 Q. Okay. The account number 0231142 matches the repository
12 screen?
13 A. That's correct.
14 Q. And who is the holder of this account?
15 A. Cimarron River Ranch, LLC, 218 Turkey Track Trail in 03:35:41
16 Canyon, Texas.
17 Q. Okay. And let's go now to the bottom portions of the
18 screen and let's go to the date of July 5 and highlight the
19 check reflecting \$1,015.65.
20 A. Yes. It shows a check there on the bank statement dated 03:36:08
21 July 5 for \$1,015.65.
22 Q. And then let's go to page 143 of the same exhibit. Is
23 this the check associated with that payment to American
24 Express?
25 A. Yes. It's the same name on the check, the Cimarron River 03:36:34

WALTER E. GIBBS - Cross

1 Ranch. The check was actually written June 27, '06, for 03:36:37
2 \$1,015.65. The American Express account number was written
3 right in the memo section of the check.

4 Q. And at the bottom you can see the account number in the
5 memo? 03:36:57

6 A. Yes.

7 MR. PERKEL: No further questions. Thank you.

8 THE COURT: All right.

9 Cross?

10 MS. ARNETT: Thank you, Your Honor. 03:37:07

11 **CROSS - EXAMINATION**

12 BY MS. ARNETT:

13 Q. Hi.

14 A. Hi.

15 Q. In all of the charges that you looked at, none of them 03:37:19
16 were made by James Parker, were they?

17 A. I'm sorry. Would you repeat that?

18 Q. The charges on the American Express that you looked at,
19 they were all made by Jackie Parker; correct?

20 A. That's correct, yes, they were. 03:37:34

21 Q. And when you first got on the stand, you noticed that the
22 American Express account number wasn't redacted; correct?

23 A. It was not.

24 Q. And that means that Mr. Parker's account number is now
25 public; correct? 03:37:47

WALTER E. GIBBS - Cross

1 MR. PERKEL: Objection, Your Honor. 03:37:50

2 THE COURT: Hold on a second.

3 Your objection?

4 MR. PERKEL: It's -- there's no foundation. This is
5 Jacqueline Parker's account number. 03:37:58

6 THE COURT: Okay. Sustained.

7 BY MS. ARNETT:

8 Q. You noticed that the account number for Jacqueline Parker
9 wasn't redacted; correct?

10 A. That's correct. 03:38:16

11 Q. So Jacqueline Parker's account number is now public;
12 correct?

13 A. That's correct.

14 MS. ARNETT: No further questions, Your Honor.

15 THE COURT: All right. 03:38:23

16 Any redirect?

17 MR. PERKEL: No, Your Honor.

18 THE COURT: Okay. You may step down.

19 THE WITNESS: Thank you, Your Honor.

20 (Witness excused.) 03:38:28

21 THE COURT: Your next witness?

22 MR. PERKEL: Yes, Your Honor. The government calls
23 Cleatus Hunt.

24 CLEATUS P. HUNT, JR.,

25 called as a witness herein by the Government, having been first 03:39:07

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1 duly sworn or affirmed to testify to the truth, was examined 03:39:07
2 and testified as follows:

3 COURTROOM DEPUTY: State your name for the record.
4 Spell your last name, please.

5 THE WITNESS: Cleatus P. Hunt, Jr., Hunt spelled 03:39:20
6 H-U-N-T.

7 **DIRECT EXAMINATION**

8 BY MR. PERKEL:

9 Q. Good afternoon, Mr. Hunt.

10 A. Good afternoon. 03:39:47

11 Q. Could you please state your full name for the record?

12 A. Cleatus P. Hunt, Jr.

13 Q. And, Mr. Hunt, where are you employed?

14 A. With U.S. Customs and Border Protection here in Phoenix
15 Sky Harbor International Airport. 03:40:00

16 Q. U.S. Customs and Border Protection, is that a part of any
17 of the federal agencies?

18 A. Yes. It's a component within the Department of Homeland
19 Security.

20 Q. And you stated that you work at Sky Harbor Airport? 03:40:10

21 A. Yes, I do.

22 Q. What is your official title there?

23 A. Port director.

24 Q. And what do you do there?

25 A. I have operational responsibility for Sky Harbor, 03:40:23

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CLEATUS P. HUNT, JR. - Direct

1 Scottsdale and Mesa Gateway. We are responsible for ensuring 03:40:26
2 that all international travelers and international goods
3 entering the U.S. or exiting the U.S. have the proper
4 documentation.

5 Q. And what is the general responsibility of the Customs and 03:40:43
6 Border Protection?

7 A. In general, I mean, our primary responsibility is to
8 ensure that anyone coming to the United States has the proper
9 documentation to either enter the U.S. or be in the United
10 States. 03:40:59

11 Q. And how does your group differ from the border patrol?

12 A. My group has responsibility at the port-of-entry so when
13 travelers arrive, that is considered port-of-entry. Border
14 Patrol has responsibility in between the ports-of-entry.

15 So, for example, the land border, if you were at the 03:41:22
16 port-of-entry at Nogales, that's where my officers would be.
17 Once you cross that border, I think it's up to 100 miles
18 inland, that's where border patrol has responsibility. They
19 try to intercept anyone that may have circumvented the
20 port-of-entry by any means. 03:41:38

21 Q. And how long have you been a -- is it an officer or agent
22 with Customs and Border Patrol?

23 A. Either way is fine.

24 Q. How long have you been an agent with the Customs and
25 Border Patrol? 03:41:50

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CLEATUS P. HUNT, JR. - Direct

1	A.	19 years.	03:41:51
2	Q.	And can you tell us about your educational background?	
3	A.	I went to the University of Buffalo, majored in	
4		psychology, graduated in 1995.	
5	Q.	And how long have you been stationed in the Phoenix area	03:41:59
6		at the airport?	
7	A.	Just short of two years, about a year, seven or eight	
8		months.	
9	Q.	And prior to working at the airport, where were you	
10		stationed or ordered to be?	03:42:10
11	A.	Prior to Phoenix, I was stationed in Calgary, Alberta,	
12		Canada.	
13	Q.	And can you tell us the list of places that you've been to	
14		or that you worked at?	
15	A.	I began my career in Buffalo, New York. I worked in	03:42:22
16		Niagra Falls, served in Montreal, Quebec, Canada; Baltimore,	
17		Maryland; St. Thomas, U.S. Virgin Islands; Washington, D.C.;	
18		and Calgary, Alberta, Canada; and now Phoenix, Arizona.	
19	Q.	I would like to show you what has been identified and is	
20		not in evidence as Government's Exhibit 369. I don't know if	03:42:48
21		it's in front of you or not. There it is.	
22	A.	Okay.	
23	Q.	Do you recognize that exhibit?	
24	A.	I do.	
25	Q.	And is this a certified copy of crossing history	03:43:05

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1 maintained in the TEC system pertaining to James Parker and 03:43:13
2 Jacqueline Parker?

3 A. It is.

4 Q. And does it have the certification at the bottom of the
5 document? 03:43:24

6 A. It does.

7 MR. PERKEL: Your Honor, at this point I offer
8 Exhibit 369 into evidence.

9 MS. ARNETT: No objection.

10 THE COURT: It's admitted. 03:43:32

11 (Exhibit Number 369 was admitted into evidence.)

12 BY MR. PERKEL:

13 Q. Now, when we talk about certified border crossings --
14 well, we talk about border crossings, can you explain
15 generally, without the exhibit, how does one enter and leave 03:43:47
16 the United States? What are the different border crossings and
17 what are the ports-of-entry? Can you explain what all of that
18 means?

19 A. Well, a traveler could depart the United States by any
20 means. They could choose any airport. They could drive across 03:44:00
21 any land border using a private facility to depart the United
22 States.

23 However, when you re-enter the United States from a
24 foreign country, you must re-enter at a designated
25 port-of-entry. CBP has currently about 320 or '27 03:44:11

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1 ports-of-entry. So we record all departures and entries in to 03:44:15
2 the United States, whether it be from a port-of-entry when you
3 depart and most certainly in to a port-of-entry when you
4 return.

5 Q. How does CBP -- let me even back up. 03:44:35

6 You said it records all departures and entries at
7 ports-of-entry. Does it also record someone who drives to
8 Mexico and travels through a port-of-entry there?

9 A. That is the one piece of information we cannot capture.
10 If you drive across the border by car, we do not capture that 03:44:52
11 departure by car.

12 Q. And now let's talk about departures only. Tell us how the
13 CBP captures departure information.

14 A. Commercial carriers, whether they be air or by sea, are
15 required to provide CBP with an advanced manifest prior to 03:45:10
16 departing the United States. All travelers that are manifested
17 on that aircraft or that vessel, those passengers, that
18 information must be provided to CBP before they depart.

19 Q. And are the airlines and vessels, the ships that transport
20 people, cruise lines, they are obligated to pass on that 03:45:32
21 information to CBP?

22 A. Yes, by regulation, they are obligated to pass on the
23 information.

24 Q. And then let's now talk about arrivals at a port-of-entry
25 which is different than departures. Tell us how it is CBP 03:45:49

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1 captures the arrival.

03:45:57

2 A. That's by the same mechanism. The carriers are also
3 responsible for providing an inbound passenger manifest of all
4 travelers that will be arriving, whether it be by air or by
5 sea.

03:46:03

6 Q. And when someone arrives by air or sea -- when someone
7 arrives by air, is there any additional information that is
8 captured when they actually enter the United States?

9 A. When someone arrives by air, when they interact with the
10 officer at the primary inspection booth, that officer will take
11 their entry documents, most likely a passport in most cases,
12 and swipe that document.

03:46:19

13 Once they swipe that document, the information from
14 the document is compared to the manifest that was transmitted
15 by the carrier. And if everything matches, the officer
16 confirms that passenger as a match to the manifest record and
17 then that person is confirmed as having entered the United
18 States.

03:46:31

19 Q. And looking at the document in front of you, this exhibit
20 pertaining to border crossings from January of 1999 to July of
21 2010 for Mr. James Parker and Jacqueline Parker, did you have
22 an opportunity, even before testifying today, to confirm the
23 data that is contained in this exhibit?

03:46:46

24 A. Yes, I did.

25 Q. Let's go to page five of the exhibit and let's just focus

03:47:08

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CLEATUS P. HUNT, JR. - Direct

1 in on the first entry for Parker. That's it. The one that 03:47:16
2 says Parker. If you could focus in on that one. If you could
3 back out.

4 All right now, let's -- well, why don't you tell us
5 what this shows here? 03:47:47

6 A. Well, this report is extracted from a database that we
7 refer as TECS. TECS is a multi-use law enforcement system,
8 contains lots of information, criminal history. But in this
9 particular case, this is crossing history or international
10 travel that we record. 03:48:03

11 So this APIS record would be a record of crossings
12 for James Parker, date of birth, 10-8-1948. It gives the date
13 of departure, the document that was used, passport number, the
14 country of the document and then the P stands for -- the
15 P stands for passport. So if it were any document other than a 03:48:28
16 passport, you would see a different letter there, but this one
17 in this particular case, that refers to a passport.

18 It also will reflect the city that the person
19 traveled to, the city that the person departed from, and the
20 carrier. 03:48:43

21 Q. Okay. Let's -- let me ask you a couple of questions about
22 that.

23 So the first line you see highlighted and it's on the
24 screen, too. We see the name Parker?

25 A. Yes, I do. 03:48:54

CLEATUS P. HUNT, JR. - Direct

1 Q. And that's the person who was reported as leaving the 03:48:54
2 United States?
3 A. That's correct.
4 Q. And then we see the name James, that's the first name;
5 correct? 03:49:03
6 A. Correct.
7 Q. And then that date next to it, what is that date?
8 A. That is the date of birth.
9 Q. So if we go down to the line right below Parker, that date
10 of 2-1-08, what is that date? 03:49:12
11 A. That is the date of the departure record. So the date
12 that this individual departed the United States is February 1,
13 2008.
14 Q. And what do the letters API stand for?
15 A. Advance passenger information. 03:49:30
16 Q. What does that mean?
17 A. That, again, the carrier is required to provide that
18 information to us in advance of the departure so that we may
19 vet those lists to determine if there's any individual leaving
20 that we may need to interact with before they depart. 03:49:42
21 Q. And the number under the name James, what is that number?
22 A. That is a document number.
23 Q. Is that his passport number?
24 A. It is. And you determine that by going sort of -- going
25 along that line, you see the document number, then it shows 03:50:01

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CLEATUS P. HUNT, JR. - Direct

1 country, U.S. And then the type of document is P for passport. 03:50:05
2 Q. And prior to testifying today, have you had the chance to
3 confirm that that was or is the passport number pertaining to a
4 James Parker with that date of birth?
5 A. Yes, I have. 03:50:19
6 Q. Now, let's go to the next line and right below the -- the
7 next line of the same record. And right below the API, what
8 does that R stand for?
9 A. Reporting.
10 Q. So that's the report from the airline? 03:50:41
11 A. That's correct.
12 Q. And what does that CO stand for?
13 A. Continental Airlines.
14 Q. And next after that?
15 A. Flight number 1628. 03:50:49
16 Q. And now this part here, what does the BZE stand for?
17 A. That's the airport code for Belize.
18 Q. And the IAH?
19 A. Airport code for Houston.
20 Q. So Belize is the destination in this case? 03:51:02
21 A. That's correct. It's the arrival location.
22 Q. Arrival. So the arrival location is that code written
23 before the departure location?
24 A. That's correct.
25 Q. So this record reflects a flight from Houston to Belize; 03:51:13

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CLEATUS P. HUNT, JR. - Direct

1 is that right? 03:51:17

2 A. That is correct.

3 Q. Now, let's click out of here and now I want to just focus
4 in on the first two records, including the one we looked at as
5 well as the second one. 03:51:27

6 Now, let's take a look at the second record and we'll
7 walk through step by step starting, again, with the name
8 Parker.

9 A. Yes.

10 Q. And then James. This is another record for James Parker;
11 correct? 03:51:41

12 A. That is correct.

13 Q. And what is the date under the name Parker?

14 A. February 11, 2008.

15 Q. And what is that time next to it? 03:51:51

16 A. 20:38 hours, 8:38 eastern time.

17 Q. And do you know what the KT09 means?

18 A. KT09 is simply going to be a terminal identification
19 number. All of our work stations have an ID number, so that
20 would be the ID number of the work station. 03:52:08

21 Q. And what about API again?

22 A. Advance passenger information.

23 Q. And, again, is that the same passport information we
24 discussed, 211307331?

25 A. That is correct. 03:52:24

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CLEATUS P. HUNT, JR. - Direct

1 Q. Let's go down to right below the API, there's another 03:52:24
2 little code C?
3 A. That stands for confirmed.
4 Q. And what does that C mean?
5 A. As I stated previously, they provide the manifest. From 03:52:35
6 when the traveler arrives, we take the document they present,
7 we swipe that document in our system. It compares that
8 information against the manifest. If it indeed matches, the
9 officer manually indicates a confirmed traveler, so that
10 indicates that the traveler was on the flight and did present 03:52:50
11 themselves to the officer upon arrival to the United States.
12 Q. And then next to the C we have the CO 1652.
13 A. Correct. Continental flight 1652.
14 Q. And then can you tell us now -- IAH is what again?
15 A. Houston. 03:53:10
16 Q. And that's the arrival destination; right?
17 A. That is correct.
18 Q. And the departure location?
19 A. BZE is Belize.
20 Q. Let's go to the next two records. Let's highlight them 03:53:22
21 together. Let's go to the record that has 7-27-06. Can you
22 tell us what that record is?
23 A. This is another record for James Parker. Date of birth of
24 October 8, 1948. The departure record is recorded 7-27-2006.
25 Same passport number as the two records above and this showing 03:53:53

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CLEATUS P. HUNT, JR. - Direct

1 a departure on Continental flight 1628 from Houston to Belize. 03:53:56
2 Q. And let's take a look at the record below.
3 A. The record below also is for James Parker. Same passport
4 number as above. This record reflects a confirmed entry in to
5 the United States onboard Continental flight 1652 on July 30, 03:54:14
6 2006, from Belize in to Houston.
7 Q. And I might have misheard you. Did you say 1652?
8 A. 1650.
9 Q. And the dates 7-27 and 7-30 with these records, they
10 look -- they are pretty close contemporaneously; is that 03:54:37
11 correct?
12 A. Correct.
13 Q. But the records only really reflect the departure and
14 arrival. They are not really matching up dates. Is that fair
15 to say? 03:54:46
16 A. That's correct.
17 Q. Let's go to the next two records. It starts with February
18 12, 2006.
19 What does the record for February 12, 2006, show?
20 A. The record for February 12, 2006, reflects a record for -- 03:55:26
21 a departure record for James Parker, same passport number as
22 above, same date of birth. Although this record is slightly
23 different in that it's an AVI, which is advance vessel
24 information, same concept. Commercial vessels are required to
25 provide advance passenger information. We just code it 03:55:45

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1 differently in our system so that we know for sure whether or
2 not it was a commercial air vessel or a sea vessel.

03:55:49

3 So this is an advance vessel information report for
4 James Parker departing on 2-12-2006. The departure location is
5 a four number code, in this case, 2501. I believe that
6 record -- that code is for San Diego. And then it shows an
7 arrival code of 8133, and my memory says I believe that's a
8 location in Canada.

03:56:07

9 Q. Okay. Now, let me just go back to that VES. Is that what
10 you're referring to as the vessel?

03:56:33

11 A. There's two indicators that indicates it's a vessel, the
12 AVI, which is advance vessel information, and then you will
13 also have VES for the carrier code.

14 Q. Oh. Okay. Rather than, like, a CO for Continental?

15 A. Right, rather than an airline code, you would have
16 VES standing for vessel.

03:56:47

17 Q. And the number 9188647, based on your experience, do you
18 know what vessel that is?

19 A. I can't say with certainty. That is a vessel registration
20 number.

03:56:59

21 Q. Okay. Let's go to the next slide and what does that
22 record reflect?

23 A. This record reflects an inbound record for James Parker,
24 same date of birth, same passport number. Inbound for February
25 20, 2006. It's an advance vessel information record. Same

03:57:23

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CLEATUS P. HUNT, JR. - Direct

1 vessel registration number as the record above and it shows a
2 departure from 8133 to 2501.

03:57:25

3 Q. And based on your experience, are these vessels often
4 associated with cruise ships?

5 A. Yes, they are.

03:57:50

6 Q. Let's go to the last record on the page only. What does
7 this record show?

8 A. This is another outbound departure record for James
9 Parker. Same passport number, the outbound record is for
10 October 2, 2005. It's a vessel record and then there's another
11 vessel registration number that shows the departure from port
12 code 0401 going in to 8037.

03:58:08

13 Just to indicate, even though I'm not sure of the
14 exact certain code, the requirement is to report any commercial
15 air or commercial sea vessel leaving the United States and
16 going to a foreign destination. So in this particular case, I
17 know that the departure destination, the departure code, is a
18 U.S. port and the 8037 is a foreign location.

03:58:32

19 Q. Okay. Do you know those codes by any chance, 0401?

20 A. Not off the top of my head.

03:59:00

21 Q. Okay. Let's go to the next page of the exhibit, which is
22 page six, and let's do the first two items. Let's take a look
23 at the first one for 10-3-05. What does that reflect?

24 A. This reflects an outbound vessel record for James Parker,
25 same passport number as the records above. Date of birth,

03:59:28

United States District Court

CLEATUS P. HUNT, JR. - Direct

1 October 8, 1948, and it shows a departure from 0101 and to 8037 03:59:32
2 foreign port-of-entry.

3 Q. And let's go to the next line.

4 A. The next line reflects an inbound record for James Parker,
5 inbound on October 8, 2005. A departure location, 8037, 03:59:56
6 foreign port from above, in to the 7777 port, U.S.
7 port-of-entry.

8 Q. Okay. Let's go on to the -- let's back out of there and
9 go to the -- just the next line, the one that says 8-21-04.
10 What does this record show? 04:00:23

11 A. This record shows an inbound record for James Parker for
12 August 21, 2004, and it's a vessel record, advance vessel
13 information.

14 My experience says that this is probably the Disney
15 Princess. That's what that code may stand for. And it departs 04:00:38
16 at 8888, which is a foreign port for vessels. It's
17 nondescript. At this particular time, I think it's a generic
18 code you can use for foreign port, arriving in to Seattle.

19 This particular record has a different passport
20 number. My research says this is the passport that he had 04:00:58
21 prior to the one above.

22 Q. Okay. And let's go now to the entry for 6-12-04. Let's
23 just look at that one.

24 A. 6-12-04 reflects another inbound record for James Parker,
25 inbound vessel record for June 12, 2004. The vessel reported 04:01:13

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CLEATUS P. HUNT, JR. - Direct

1 is the Disney Magic believing 8888 and arriving in to Port 04:01:18
2 Canaveral.

3 Q. Is Port Canaveral in Florida?

4 A. It is.

5 Q. Let's go to the next three records. We can highlight 04:01:45
6 those together. Can you tell us what happened on 8-8-03 based
7 on what the record reflects happened I guess?

8 A. The record reflects an outbound record for James Parker.
9 It shows an outbound departure from Seattle going in to the
10 arrival location of YVR, which is Vancouver. 04:02:01

11 Q. Okay. And what happened on 8-9-03, what does that record
12 reflect?

13 A. 8-9-03, in my experience, reflects -- CBP has a presence
14 overseas in many locations. One of those locations is
15 Vancouver. Essentially, the job that we do at every 04:02:24
16 port-of-entry in the United States, we do in certain foreign
17 countries. We call that preclearance.

18 So if you are departing from any one of our
19 preclearance locations and entering the United States, your
20 inspection will occur in that foreign country. So in this 04:02:36
21 particular case, we have an inspection station in Vancouver.
22 It shows a record that is reported for -- it shows pedestrian
23 because Vancouver does outbound cruise ships as well. So when
24 they do an outbound cruise ship, the passenger is often
25 recorded as a pedestrian when they board the ship. 04:02:54

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CLEATUS P. HUNT, JR. - Direct

1 But it shows a record for James Parker as a 04:02:56
2 pedestrian for August 9, 2003. However, just below the code
3 where it shows PED, there is an N. N reflects that that person
4 either was not onboard, did not board, did not make an entry on
5 that date. 04:03:18

6 Q. I see. Okay. And what about the entry below that, does
7 that reflect something?

8 A. The record below for James Parker, August 11, 2003, is a
9 reported inbound advance vessel information record. U.S.
10 passport number there, and it shows a departure location from 04:03:35
11 YVR to AKT, YVR being Vancouver. Arrival location, AKT stands
12 for Cypress. I couldn't say for certain what the name of this
13 vessel is. That is an abbreviation. It looks like it may be
14 The Spirit.

15 Q. The YVR, that's Vancouver, Canada, and AKT, Cypress, that 04:03:57
16 is Cypress, which is in the Mediterranean. Is there any reason
17 why CBP would keep this record? It seems like a
18 foreign-to-foreign type travel. Why does CBP have this one?

19 A. Well, again, the carriers are required and responsible for
20 providing us with this information. In this particular case, 04:04:19
21 the carrier would have been going -- the only reason why we get
22 these records is because someone is coming to the United States
23 and we want to vet them. So if this were solely a
24 foreign-to-foreign voyage, we would have no purpose for the
25 record would have never been given to us. 04:04:33

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CLEATUS P. HUNT, JR. - Direct

1 So my experience says that this person went from 04:04:35
2 Vancouver to a U.S. destination and then that vessel went
3 onward to Cypress.

4 Q. Okay.

5 Let's go to the next page. The next page is page 04:04:46
6 seven and let's do the top two entries. What does the entry on
7 June 2 reveal?

8 A. The entry on June 2, 2003, reflects an inbound record for
9 James Parker, confirmed passenger onboard flight Continental
10 1958 departing Belize and arriving in to Houston. 04:05:16

11 Q. Okay. And what about the next record below on May 28,
12 2003?

13 A. May 28, 2003, reflects a departure record for James Parker
14 onboard flight Continental 1959 leaving Houston, arriving in
15 Belize. 04:05:39

16 Q. All right. Let's go to the next two line items. What
17 about the record for the date March 28, 2003, what does that
18 record show?

19 A. Departure record for James Parker departing onboard
20 Continental flight 1959 from Houston to Belize. 04:05:58

21 Q. And what about the record or the line for the date March
22 31, 2003, what does that show?

23 A. It shows a confirmed inbound record for James Parker
24 onboard Continental flight 1958 from Belize in to Houston.

25 Q. And then let's take a look at the next two line items. 04:06:18

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CLEATUS P. HUNT, JR. - Direct

1 What does that show? The one for February 15, 2003? 04:06:24

2 A. The one for February 15, 2003, shows an outbound record
3 for James Parker departing from Houston and to Belize onboard
4 Continental flight 1959.

5 Q. Okay. And the one below? 04:06:45

6 A. The one below shows a confirmed inbound record for James
7 Parker on February 18, 2003, onboard Continental flight 1958
8 departing Belize and arriving in to Phoenix.

9 Q. Okay. And if we could back out of that screen. Let's go
10 to the last two entries on that page. What does that show? 04:07:07

11 A. The first record of December 15, 2002, reflects a
12 confirmed inbound record for James Parker onboard Continental
13 flight 1958 departing Belize and arriving in to Houston.

14 Q. And the entry below?

15 A. Reflects a confirmed inbound record for James Parker on 04:07:32
16 September 1, 2002, onboard Continental flight 1958 departing
17 Belize and arriving in to Houston.

18 Q. And let's go to the next page, page eight, of the exhibit
19 and let's go just to the first one and let's -- what does that
20 record reflect? 04:07:59

21 A. This record reflects a confirmed inbound record for James
22 park on February 22, 2002, onboard Continental flight 1958
23 departing Belize and arriving in to Houston.

24 Q. And let's back out of there. Let's go to the bottom three
25 on that page. What do those show? 04:08:20

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CLEATUS P. HUNT, JR. - Direct

1 A. So the record for May 7, 2000, shows an inbound confirmed 04:08:29
2 record for James Parker. I'm not familiar with the code TA but
3 it's TA flight 410 arriving from Belize in to Houston.
4 The following record, October 16, 1999, is a
5 confirmed inbound record for James Parker onboard Continental 04:08:46
6 flight 760 arriving from Belize in to Houston.
7 The following record, May 14, 1999, is a confirmed
8 record inbound for James Parker on board flight TA 410 arriving
9 from Belize in to Houston.
10 Q. And then let's go to the next page and let's highlight the 04:09:12
11 first three and what does the record from 2-20-1999 show?
12 A. Confirmed inbound for James Parker onboard flight TA 410
13 arriving from Belize in to Houston.
14 Q. And the one for April 14, 2002?
15 A. Confirmed inbound record for James Parker, Continental 04:09:45
16 flight 1958, from Belize in to Houston.
17 Q. And then the one below from June 13, 2001?
18 A. This record is a reported inbound for James Parker onboard
19 flight Continental 1230 from Belize in to Houston. My
20 experience says the report indicates he was not a passenger on 04:10:05
21 there.
22 Q. There's no C there; is that correct?
23 A. That's correct.
24 Q. Let me ask you a question. The dates on the left side,
25 2-20-99 and then back to 2002 and 2001, these records really 04:10:15

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1 aren't in any kind of chronological order. Is that fair to 04:10:21
2 say?

3 A. That's fair to say.

4 Q. Let's go to the next two records. And what do those show?

5 A. December 14, 2005, is reported outbound record for James 04:10:34
6 Raymond Parker onboard Continental flight 1628. Departure
7 location is Houston arriving in to Belize.

8 Q. And then what about December 18, 2005, what does that one
9 show?

10 A. Confirmed inbound for James Raymond Parker, Continental 04:10:53
11 flight 1650, departure location Belize, arriving in to Houston.

12 Q. And then let's go to the next two records. What does that
13 one show?

14 A. December 7, 2004, is a reported outbound record for James
15 Parker onboard Continental flight 1956 departing Houston in to 04:11:18
16 Belize.

17 The record below, December 12, 2004, is a confirmed
18 inbound record for James Raymond Parker onboard Continental
19 flight 1957, departure location Belize, arrival in to Houston.

20 Q. Now, if we could just go back to those two. Those two, 04:11:41
21 the dates are somewhat contemporaneous on December 7, 2004, and
22 December 2012, 2004. Is that fair to say?

23 A. Yes, it is.

24 Q. Let's go to the next record. This is a record for May 8,
25 2004. What does this one show? 04:12:05

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1 A. This is another preclearance record. We also have a 04:12:07
2 presence in Nassau, Bahamas. We have Nassau and Freeport. In
3 this particular case, it shows an outbound report, the record
4 for James Raymond Parker onboard Continental flight 1959. It
5 shows a departure of Nassau in to YNN. My research says that 04:12:25
6 YNN is an airport in Australia. However, again, the carrier is
7 only required to provide us information of flights entering the
8 United States or exiting the United States.

9 Given that we have a preclearance location there,
10 this flight would have gone from Nassau to a destination in the 04:12:43
11 United States and onward to a foreign port.

12 Q. Okay. Thank you. Let's go on to the next page and let's
13 go to the first -- let's just do the first three exhibits, the
14 first three lines. What does it show for the May 15, 2004
15 record? 04:13:12

16 A. Confirmed inbound record for James Raymond Parker onboard
17 Continental flight 1958, Belize to Houston.

18 Q. And what about the March 23, 2004 line item?

19 A. This is a reported outbound record for James Raymond
20 Parker reported to have departed on Continental flight 1956 04:13:29
21 from LaGuardia to Belize.

22 Q. Is the LGA LaGuardia?

23 A. Yes, it is.

24 Q. And what's the next line item?

25 A. The next line item is a confirmed inbound record for James 04:13:43

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1 Parker on March 30, 2004, confirmed to have arrived on 04:13:47
2 Continental flight 1958 from Belize in to Houston.

3 Q. And let's back out of there and go to the next two
4 records. Can you tell us what these records reflect?

5 A. The first record reflects an outbound record for James 04:14:10
6 Raymond Parker on December 11, 2003, departing on Continental
7 flight 1956 from Detroit into Belize, DTW is Detroit Wayne
8 Airport.

9 And the next record is a confirmed inbound record for
10 James Raymond Parker on December 15, 2003, arriving onboard 04:14:30
11 Continental flight 1957 from Belize into MSY, which is New
12 Orleans.

13 Q. Okay. Let's go out of here and go to the next record.
14 What does this one show?

15 A. The next record shows a reported outbound record for James 04:14:59
16 Raymond Parker October 4, 2003, departing onboard Continental
17 flight 1956 from Houston to Belize.

18 Q. And then the next record. Let's bring up the next two
19 actually.

20 A. The next record reflects a confirmed inbound record for 04:15:21
21 James Raymond Parker on October 9, 2003, arriving on
22 Continental flight 1957 from Belize in to Boston.

23 The record just below reflects a confirmed inbound
24 record for James Raymond Parker December 5, 1999, arriving
25 onboard Continental flight 1230 from Belize in to Houston. 04:15:41

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1 Q. And then let's go to the next page. Let's just go to the 04:15:51
2 first line on the next page. What does that record show?
3 A. The first line -- just the first line, the name there?
4 Q. What does that record reflect, the one for June 4, 2007?
5 A. It reflects a departure record for James Parker June 4, 04:16:13
6 2007, outbound -- LH is a Lufthansa flight, I believe, from
7 Lufthansa 457, LAX to Frankfurt.
8 Q. LAX, what's LAX?
9 A. Los Angeles.
10 Q. And Frankfurt, that's in Germany? 04:16:31
11 A. That's correct.
12 Q. Let's back out of this screen and let's do the next five
13 entries. Why don't you tell us about what these entries
14 reflect?
15 A. These entries reflect what I would call single voyage. 04:16:51
16 This record reflects a voyage for James R. Parker departing on
17 July 14, 2003. This is an advance vessel information report.
18 The is reflected as EX seas. I'm not exactly sure. I think
19 it's Excitement of the Seas. I'm not exactly sure. It shows a
20 departure location of Miami going into SIG, which is San Juan, 04:17:22
21 San Juan Isla Grande. So this vessel left Miami, went to San
22 Juan Isla Grande on 7-14-2003.
23 Q. And I'm sorry to interrupt you. And San Juan, that's
24 Puerto Rico?
25 A. Yes. 04:17:38

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1 Q. You said -- what did you say for the vessel, what's it 04:17:38
2 called?

3 A. Probably Excitement of the Seas, somewhere in there, one
4 of those cruise ships in there.

5 Q. A ship or a boat; correct? 04:17:46

6 A. It is most certainly cruise ship.

7 Q. Okay. Go to the next record.

8 A. Like I said, this is a single-voyage record so it shows on
9 7-15-23 an outbound record for James R. Parker onboard the same
10 vessel leaving SIG, which is San Juan Isla Grande, Puerto Rico, 04:18:03
11 going into 888. That is a foreign port-of-entry.

12 The 7-16-2003 reflects an inbound record for James R.
13 Parker onboard the same vessel as above, arriving from -- at
14 the foreign location, 888, in to STT, which is St. Thomas, U.S.
15 Virgin Islands. 04:18:31

16 The following record for 7-18-2003 reflects an
17 outbound record onboard the same vessel from STT, which is St.
18 Thomas, U.S. Virgin Islands, going to a foreign port-of-entry.
19 And then on 7-19 reflects an inbound record for James R. Parker
20 onboard the same vessel leaving from 888, a foreign 04:18:54
21 port-of-entry, a foreign location, in to Miami.

22 Q. And let's go to the last two on this page. What do those
23 two records show?

24 A. The last two records reflect an outbound record for James
25 Raymond Parker on October 14, 2008, departing on Delta flight 04:19:19

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1 152 from Atlanta into Tel Aviv. And then the following record 04:19:27
2 is a confirmed inbound record for James Raymond Parker on
3 October 28, 2008, Delta flight 153 from Tel Aviv back in to
4 Atlanta.
5 Q. Okay. Now let's go to the -- page 12 of the exhibit, the 04:19:44
6 very next page.
7 A. The very next page reflects a confirmed inbound record for
8 James Raymond Parker on June 25, 2007. Again, I believe LH is
9 a Lufthansa flight, 450, departure location is Frankfurt,
10 Germany, arriving in to Los Angeles, California. 04:20:09
11 Q. Let me ask you this question: Some of these records that
12 we've gone through for James Parker reflect a time period that
13 is contemporaneous in the sense that you can tell -- sort of
14 tell when he left and came back to the United States. There
15 are records that don't have that. They don't really have the 04:20:26
16 same time period. If one were to travel to Belize and not
17 leave the United States, can you tell us how they could go --
18 is there an alternative route they could take without leaving a
19 U.S. port?
20 A. Yes. We don't record, as I said before, land border 04:20:42
21 traffic outbound. So if you were to drive either to Canada or
22 Mexico, you can take a flight from either one of those
23 locations and we would not have it recorded in our system.
24 Q. Okay. I want to turn now to page 14 of the exhibits.
25 These are the records that pertain to Jacqueline Parker? 04:21:04

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1 A. That is correct. 04:21:07

2 Q. And let's start with the first four records and can you
3 tell us what these records reflect?

4 A. The first record for Jacqueline Parker, date of birth,
5 December 2, 1952, reflects an outbound record, an outbound 04:21:23
6 report record on February 1, 2008, onboard Continental flight
7 1628 departing Houston going to Belize.

8 Q. And the passport number there, that one that ends in
9 '7730, can you confirm that that is a passport that belongs to
10 or belongs to Jacqueline Parker? 04:21:50

11 A. Yes, I did.

12 Q. And let's go on to the next record, sir?

13 A. The next record reflects a confirmed inbound record for
14 Jacqueline Parker on February 11, 2008, arriving on Continental
15 flight 1652 from Belize in to Houston. 04:22:01

16 Q. And what about the next one?

17 A. The following record is a reported outbound vessel record
18 for Jacqueline Parker going outbound on February 12, 2006.
19 Again, there's a vessel registration number there leaving U.S.
20 port 2501, and going to foreign location 8133. 04:22:24

21 Q. Okay.

22 MS. ARNETT: Excuse me.

23 Your Honor, Jackie Parker has her own trial. I
24 understand the records are in, but I would think anything to
25 Jackie Parker is irrelevant to this case. 04:22:39

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1 MR. PERKEL: Your Honor, if it's an objection to 04:22:43
2 relevancy, the relevance of the evidence is that at the time
3 the defendant was making statements to the IRS about his lack
4 of funds, they were paying for trips all around the world. And
5 I think that that is perfectly relevant. It was a joint 04:22:54
6 filing.

7 THE COURT: Overruled.

8 BY MR. PERKEL:

9 Q. Let's go to the next line item.

10 A. The next line item reflects an inbound record onboard a 04:23:06
11 vessel for Jacqueline Parker, February 20, 2006, same vessel
12 registration number as record above, arriving from foreign
13 location 8133 in to U.S. port 2501.

14 Q. Okay. And let's go to the bottom three on this page. And
15 what is the date of -- is this -- this looks like a similar 04:23:33
16 record to what we looked at with regards to Mr. Parker; is that
17 right?

18 A. This appears to also be a single-voyage record.

19 Q. Can you just tell us what the first one, first line item,
20 represents? 04:23:51

21 A. The first line item report is an outbound reported vessel
22 record for Jacqueline Parker departing on October 2, 2005.

23 It's a vessel, has a vessel registration number departing a
24 U.S. port-of-entry 0401 arriving in to foreign location 8037.

25 Q. Okay. And what about that next line item? 04:24:13

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1 A. The next line item is another outbound report for 04:24:16
2 Jacqueline Parker on 10-3-2005 departing -- same vessel
3 registration number as above, departing 0101 going in to 8037.
4 Q. Okay. And let's go to the next line item.
5 A. The next line item is a reported inbound vessel record for 04:24:35
6 Jacqueline Parker, October 8, 2005, arriving on the same
7 vessel, registration number as above from foreign location 8037
8 in to 7777 U.S. port.
9 Q. And that VES suggests a cruise ship; is that correct?
10 A. That's correct. 04:24:58
11 Q. Let's go now to the next page. Okay, let's just do the
12 first two records. What are the -- let's start with the
13 January 6, 2005. What does that record reflect?
14 A. The January 6, 2005, reflects an inbound record for
15 Jacqueline Parker onboard the vessel, the legend departing 04:25:21
16 foreign location 8888, arriving in to U.S. port-of-entry 5203.
17 Q. And what's 5203?
18 A. Port Canaveral, Florida.
19 Q. And then what about the entry below?
20 A. The entry below reflects a departure from the United 04:25:40
21 States for Jacqueline Parker on December 29, 2004, onboard the
22 vessel The Legend, leaving from 5203, Port Canaveral, Florida,
23 going in to a foreign location.
24 Q. And let's take a look at the next two entries. Let's back
25 out of there. Why don't you tell us about those, starting with 04:26:01

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1 the 8-21-04? 04:26:11

2 A. That is a reported inbound record for Jacqueline Parker
3 onboard vessel -- my experience says this is the Disney
4 Princess arriving from foreign location 8888 in to U.S.
5 port-of-entry Seattle. 04:26:25

6 The following record for June 12, 2004, is a reported
7 inbound record for Jacqueline Parker onboard vessel Disney
8 Magic leaving from 8888 arriving in to U.S. port-of-entry port
9 Canaveral, Florida.

10 Q. All right. And let's get out of there and go to the next 04:26:50
11 two records.

12 A. Okay. The next two records.

13 Q. Starting with October 4, 2003.

14 A. Reported outbound air travel for Jacqueline Parker
15 departing the United States on Continental flight 1956, leaving 04:27:10
16 from Houston going to Belize. The next record is a confirmed
17 inbound record for Jacqueline Parker on October 9, 2003,
18 onboard Continental flight 1957 leaving Belize arriving in to
19 Boston.

20 Q. And then the next two records, do those records reflect 04:27:36
21 the same Seattle-to-Vancouver record?

22 A. Yes, it does as we previously discussed in the James
23 Parker records.

24 Q. And then the record below again references the
25 port-of-entry where one could essentially walk; is that right? 04:27:55

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A. Right, where we do the outbound cruise ship inspections before they depart.

04:27:57

Q. Let's go on to the next page then.

THE COURT: No. Let's not.

All right.

04:28:10

Ladies and gentlemen, we'll see you here on the 19th. You can go on your own vacation until the 19th we'll see you here at 8:30.

And we are adjourned.

(Jury departs.)

04:28:28

(Whereupon, these proceedings recessed at 4:28 p.m.)

* * * * *

CLEATUS P. HUNT, JR. - Direct

C E R T I F I C A T E

04:28:28

I, ELAINE M. CROPPER, do hereby certify that I am
duly appointed and qualified to act as Official Court Reporter
for the United States District Court for the District of
Arizona.

04:28:28

I FURTHER CERTIFY that the foregoing pages constitute
a full, true, and accurate transcript of all of that portion of
the proceedings contained herein, had in the above-entitled
cause on the date specified therein, and that said transcript
was prepared under my direction and control, and to the best of
my ability.

04:28:28

DATED at Phoenix, Arizona, this 13th day of August,
2012.

04:28:28

s/Elaine M. Cropper

04:28:28

Elaine M. Cropper, RDR, CRR, CCP

United States District Court